

Approved 3/15/89

Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:02 a.m./~~p.m.~~ on March 3, 1989 in room 254-E of the Capitol.

Members present:

Senators Morris, Doyen, Francisco, Hayden, Kanan, F. Kerr, Martin, Rock and Sallee.

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Action on S.B. 250 - Commercial Drivers' License Act.

The Chairman said the sub-committee had met and went thru the bill to respond to all concerns expressed throughout the hearings. There had been a great deal of input from the Motor Carriers Association and a number of changes had been made.

The sub-committee consisted of Sen. Doyen, Chairman and members were Senators Francisco, Martin and Sallee. They had met on February 27th with Mark Wettig, Mark Burghart and John Smith, Department of Revenue; Mary Turkington and Tom Whitaker, Kansas Motor Carriers Association; and Bruce Kinzie and Hank Avila, staff. They went through S.B. 250 and had inserted proposed amendments into a draft bill with changes that had been proposed by the Topeka Metropolitan Transit Authority, Amalgamated Transit Union, Kansas Motor Carriers Association and Kansas Association of Wheat Growers. (Attachment 1).

The full committee went through the draft bill and changes were suggested as they worked through the bill.

A motion was made by Sen. Doyen that a substitute bill for S.B. 250 be introduced to reflect the changes worked out in the bill and that the substitute bill be recommended favorably for passage. Motion was seconded by Sen. Sallee. Motion carried.

The Chairman thanked the sub-committee and staff for the amount of work they had put into this bill. He said there had been very good cooperation between all parties concerned to produce the final bill.

Meeting was adjourned at 9:30 a.m.

SENATE BILL No. 250

By Committee on Transportation and Utilities

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AN ACT enacting the Kansas uniform commercial drivers' license act; amending K.S.A. 8-234b, 8-235d, 8-237, 8-239, 8-241, 8-252, 21-4619 and 22-2909 and K.S.A. 1988 Supp. 8-235, 8-236, 8-238, 8-240, 8-243, 8-254, 8-256, 8-259, 8-267, 8-294, 8-1002, 8-1014, 8-1015, 8-1566, 8-1567, 8-2106, 12-4416 and 12-4516 and repealing the existing sections; also repealing K.S.A. 1988 Supp. 8-1018, and 74-2012 8-1018,

Be it enacted by the Legislature of the State of Kansas: 18

New Section 1. Sections 1 through 19 may be cited as the Kansas uniform commercial drivers' license act and sections 1 through 18 shall govern commercial drivers' licenses on and after January 1, 1991.

New Sec. 2. (a) The purpose of this act is to implement the federal commercial motor vehicle safety act of 1986 (title XII of public law 99-570) and reduce or prevent commercial motor vehicle accidents, fatalities and injuries by:

- (1) Permitting commercial drivers to hold only one driver's license;
- (2) disqualifying commercial drivers who have committed certain serious traffic violations or other specified offenses; and
- (3) strengthening driver licensing and testing standards.

(b) This act is remedial law and shall be liberally construed to promote public health, safety and welfare. To the extent that this act conflicts with general driver licensing provisions, this act prevails. Where this act is silent, the general driver licensing provisions apply.

New Sec. 3. Vehicles that are exempt from this act include:

(a) Farm vehicles, defined as follows: or truck tractor

- (1) Registered as a farm truck under K.S.A. 8-143, and amendments thereto;
- (2) used to transport either agricultural products, farm machinery,

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15 farm supplies, or both, to or from a farm;

16 (3) not used in the operations of a common or contract motor
17 carrier; [and]

18 (4) used within 150 miles of the person's farm;

19 (b) [firefighters and] operators of [emergency] equipment;

20 (c) military vehicles which are operated by military personnel in
21 pursuit of military purposes and all noncivilian operators of equip-
22 ment owned or operated by the United States department of defense.
23 This applies to any active duty military personnel and members of
24 the reserves and national guard on active duty, including personnel
25 on full-time national guard duty, personnel on part-time training and
26 national guard military technicians, civilians who are required to
27 wear military uniforms and are subject to the code of military justice;
28 and

29 (d) motor vehicles, which would otherwise be considered com-
30 mercial motor vehicles, if such vehicles are used solely and exclu-
31 sively for private noncommercial use and any operator of such
32 vehicles.

33 New Sec. 4. As used in this act:

34 (a) "Alcohol" means any substance containing any form of alcohol
35 including, but not limited to, ethanol, methanol, propanol and
36 isopropanol;

37 (b) "alcohol concentration" means:

38 (1) The number of grams of alcohol per 100 milliliters of blood;

39 (2) the number of grams of alcohol per 210 liters of breath; or

40 (3) the number of grams of alcohol per 67 milliliters of urine;

41 (c) ["commerce" means:

42 (1) Trade, traffic and transportation within the jurisdiction of the
43 United States between a place in a state and place outside of the
44 state, including a place outside the United States; and

45 (2) trade, traffic and transportation in the United States which
46 affects any trade, traffic and transportation in subsection (c)(1);

47 [(d)] "commercial driver's license" means a license issued pursuant
48 to K.S.A. 8-234b, and amendments thereto;

49 [(e)] "commercial driver license system" means the information
50 system established pursuant to the commercial motor vehicle safety
51 act of 1986 to serve as a clearinghouse for locating information related

and

(5) not used to transport hazardous material
which requires the vehicle to be placarded;

firefighting

(d)

to the licensing and identification of commercial motor vehicle drivers;

83 [f] "instruction permit" means a permit issued pursuant to K.S.A. (e)

84 1988 Supp. 8-294, and amendments thereto; (f)

85 [g] "commercial motor vehicle" means a motor vehicle designed
86 or used to transport passengers or property, if:

87 (1) The vehicle has a gross vehicle weight rating of 26,001 or
88 more pounds or such lesser rating, as determined by federal (g) rules and regulations adopted by the secretary, but
89 regulation; shall not be more restrictive than the

90 (2) the vehicle is designed to transport 16 or more passengers,
91 including the driver; or

92 (3) the vehicle is transporting hazardous materials and is required
93 to be placarded in accordance with 49 C.F.R. 172, subpart F, ef- (g)
94 fective January 1, 1991;

95 [h] "controlled substance" means any substance so classified un- (h)
96 der K.S.A. 65-4101, and amendments thereto;

97 [i] "conviction" means an unvacated, adjudication of guilt or a
98 determination that a person has violated or failed to comply with
99 the law and in a court of original jurisdiction or an administrative
100 proceeding, an unvacated forfeiture of bail or collateral deposited to
101 secure the person's appearance in court, a plea of guilty or nolo
102 contendere accepted by the court, the payment of a fine or court (i) bail
103 cost, or violation of a condition of release without [bia], regardless (j)
104 of whether the penalty is rebated, suspended or probated;

105 [j] "disqualification" means a prohibition against driving a com- (j)
106 mercial motor vehicle;

107 [k] "drive" means to drive, operate or be in physical control of (k) 13, 14 and 18
108 a motor vehicle in any place open to the general public for purposes
109 of vehicular traffic. For purposes of sections [14, 15 and 19] of this
110 act, "drive" includes operation or physical control of a motor vehicle
111 anywhere in the state;

112 [l] "driver" means any person who drives, operates or is in phys- (l)
113 ical control of a commercial motor vehicle, in any place open to the
114 general public for purposes of vehicular traffic, or who is required
115 to hold a commercial driver's license;

116 [m] "driver's license" means any driver's license or any other (1)
117 license or permit to operate a motor vehicle issued under, or granted
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119 by, the laws of this state, including:

120 (1) Any temporary license or instruction;

121 (2) the privilege of any person to drive a motor vehicle whether
122 or not such person holds a valid license; or

123 (3) any nonresident's operating privilege;

124 [(n)] "employer" means any person, including the United States,
125 a state or a political subdivision of a state, who owns or leases a
126 commercial motor vehicle or assigns a person to drive a commercial
127 motor vehicle;

128 [(o)] "endorsement" means an authorization to an individual's com-
129 mercial driver's license required to permit the individual to operate
130 certain types of commercial motor vehicles;

131 [(p)] "felony" means any offense under state or federal law that is
132 punishable by death or imprisonment for a term exceeding one year;

133 [(q)] "foreign jurisdiction" means any jurisdiction other than a state
134 of the United States;

135 [(r)] "gross vehicle weight rating" means the value specified by
136 the manufacturer as the maximum loaded weight of a single or a
137 combination (articulated) vehicle, or registered gross weight, which-
138 ever is greater. The gross vehicle weight rating of a combination
139 (articulated) vehicle (commonly referred to as the "gross combination
140 weight rating" is the gross vehicle weight rating of the power unit
141 plus the gross vehicle weight rating of the towed unit or units;

142 [(s)] "hazardous materials" has the meaning as that found in section
143 103 of the hazardous materials transportation act, 49 U.S.C. 1801 *et*
144 *seq*;

145 [(t)] "motor vehicle" means every vehicle which is self-propelled,
146 and every vehicle which is propelled by electric power obtained
147 from overhead trolley wires but not operated upon rails, except ve-
148 hicles moved solely by human power and motorized wheel chairs;

149 [(u)] "nonresident commercial driver's license" means a commercial
150 driver's license issued by a state to an individual who resides in a
151 foreign jurisdiction;

152 [(v)] "out of service order" means a temporary prohibition against
153 driving a commercial motor vehicle, which is imposed when a driver
154 has any measured or detected alcohol concentration while on duty,
155 or operating, or in physical control of a commercial motor vehicle

(m)

(n)

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(s)

156 [or other motor vehicle] (t)

157 [(w)] "residence" means the place which is adopted by a person
158 as the person's place of habitation and to which, whenever the person
159 is absent, the person has the intention of returning. When a person
160 eats at one place and sleeps at another, the place where the person
161 sleeps shall be considered the person's residence; (u)

162 [(x)] "secretary" means the secretary of the Kansas department of
163 revenue; (v)

164 [(y)] "serious traffic violation" means:
165 (1) Excessive speeding, [which is defined as 15 miles over the
166 posted speed limit, except as otherwise provided by] federal
167 regulation; as defined by rules and regulations adopted by the
secretary, but shall not be less restrictive than the

168 (2) reckless driving, as defined under K.S.A. 8-1566, and amend-
169 ments thereto;

170 (3) a violation of any state or local law relating to motor vehicle
171 traffic control, other than a parking violation, arising in connection
172 with an accident or collision resulting in death to any person; or

173 (4) any other violation of a state or local law relating to motor
174 vehicle traffic control, other than a parking violation, which the
175 secretary determines by rule and regulation to be serious; (w)

176 [(z)] "state" means a state of the United States and the District
177 of Columbia; (x)

178 [(aa)] "state of domicile" means that state where a person has such
179 person's true, fixed and permanent home and principal residence
180 and to which such person has the intention of returning whenever
181 such person is absent; (y)

182 [(bb)] "tank vehicle" means any commercial motor vehicle that is
183 designed to transport any liquid or gaseous material within a tank
184 that is either permanently or temporarily attached to the vehicle or
185 the chassis. Such vehicles include, but are not limited to, cargo
186 tanks, as defined in 49 C.F.R. 171 in effect on January 1, 1991.

187 However, this definition does not include portable tanks having a
188 rated capacity under 1,000 ~~gallons~~ pounds; (z)

189 [(cc)] "United States" means the 50 states and the District of
190 Columbia;

191 [(dd)] "division" means the division of motor vehicles of the Kansas
192 department of revenue. (aa)

193 New Sec. 5. No person who drives a commercial motor vehicle
194 may have more than one driver's license, except during the ten-day
195 period beginning on the date the person is issued a driver's license.

196 New Sec. 6. (a) (1) Any driver of a commercial motor vehicle
197 holding a driver's license issued by this state, who is convicted of
198 violating any state law or local ordinance relating to motor vehicle
199 traffic control, in any other state, or federal, provincial, territorial
200 or municipal laws of Canada, other than parking violations, shall
201 notify the division in the manner specified by the division within
202 30 days of the date of conviction.

203 (2) Any driver of a commercial motor vehicle holding a driver's
204 license issued by this state who is convicted of violating any state
205 law or local ordinance relating to motor vehicle traffic control in this
206 or any other state or federal, provincial, territorial or municipal laws
207 of Canada, other than parking violations, must notify such person's
208 employer, in writing, of the conviction within 30 days of the date
209 of conviction.

210 (b) Any driver whose driver's license is suspended, revoked or
211 cancelled by any state, who loses the privilege to drive a commercial
212 motor vehicle in any state for any period, or who is disqualified from
213 driving a commercial motor vehicle for any period, must notify such
214 person's employer of that fact before the end of the business day
215 following the day the driver received notice of that fact.

216 (c) Any person who applies to be a commercial motor vehicle
217 driver must provide the employer, at the time of the application,
218 with the following information for the 10 years preceding the date
219 of application:

220 (1) A list of the names and addresses of the applicant's previous
221 employers for which the applicant was a driver of a commercial
222 motor vehicle;

223 (2) the dates between which the applicant drove for each em-
224 ployer; and

225 (3) the reason for leaving that employer.

226 The applicant shall certify that all information furnished is true and
227 complete. An employer may require an applicant to provide addi-
228 tional information.

229 New Sec. 7. (a) An employer shall require the applicant to pro-

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230 vide the information specified in subsection (c) of section 6.

231 (b) No employer shall knowingly allow, permit or authorize a
232 driver to drive a commercial motor vehicle during any period:

233 (1) In which the driver has a driver's license suspended, revoked
234 or cancelled by a state; has lost the privilege to drive a commercial
235 motor vehicle in a state or has been disqualified from driving a
236 commercial motor vehicle; or

237 (2) in which the driver has more than one driver's license, except
238 during the ten-day period beginning on the date the employee is
239 issued a driver's license.

240 New Sec. 8. (a) Except when driving under a commercial class
241 A, B or C or class A or B instruction permit or a valid class C
242 license and accompanied by the holder of a commercial driver's
243 license valid for the vehicle being driven, no person may drive a
244 commercial motor vehicle unless the person has a valid commercial
245 driver's license and is in immediate possession thereof and applicable
246 endorsements valid for the vehicle they are driving

, except that no person charged with violating this subsection shall be convicted if such person produces in court or the office of the arresting officer a driver's license issued to such person and valid at the time of the arrest.

247 (b) No person shall drive a commercial motor vehicle while their
248 driving privilege is suspended, revoked or cancelled, while subject
249 to a disqualification or in violation of an out-of-service order.

250 (c) Any commercial driver in violation of this section shall be
251 guilty of a class B misdemeanor.

252 New Sec. 9. (a) No person may be issued a commercial driver's
253 license unless that person is a resident of this state and has passed
254 a knowledge and skills test for driving a commercial motor vehicle
255 which complies with minimum federal standards established by 49
256 C.F.R. 383, subparts G and H, effective January 1, 1991, and has
257 satisfied all other requirements of the commercial motor vehicle
258 safety act in addition to other requirements imposed by state law
259 or federal regulation. The tests shall be prescribed and conducted
260 by the secretary;

261 (b) except as otherwise provided in this act, the following criteria
262 shall be met before an applicant who has been licensed to drive a
263 commercial motor vehicle prior to July 15, 1988, and is currently
264 licensed, may be exempt from the skills portion of the commercial
265 driver license testing. Waivers for the knowledge test and endorse-
266 ment portions of the skills test, except for the air brake endorsement

driving

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267 may not be obtained. The applicant shall provide evidence and certify
268 that [the applicant:

269 (1) Is regularly employed with a job or has secured a position
270 requiring the operation of a commercial motor vehicle, at the time
271 of application for a commercial driver's license:

272 (A) Has a good driving record which is defined by the following
273 criteria:

274 (i) Certification that] for the two-year period immediately prior
275 to applying for a commercial driver's license, the applicant:

276 [(I)] Has held only one license, except under the conditions out-
277 lined in 49 C.F.R. 383.21(b), effective January 1, 1991;

(B) 278 [(II)] currently has no [adverse] actions pending;

(C) 279 [(III)] has not had any [driving] license suspended, revoked or can-
280 celled, except as otherwise provided within this statute;

(D) 281 [(IV)] has not been convicted of any type of the disqualifications
282 listed in 49 C.F.R. 383.51, effective January 1, 1991; and

(E) 283 [(V)] has no violations under either state or local law relating to
284 motor vehicle traffic control, other than parking, arising out of a
285 [traffic accident and accidents unrecorded] in which the applicant was
286 at fault;

(F) 287 [(ii) the applicant] had no convictions for violations [of] K.S.A. 8-
288 254, and amendments thereto, or K.S.A. 8-285, and amendments
289 theret[. within the previous five years];

(G) 290 [(iii) the applicant] had no more than two violations of K.A.R. 92-
291 52-9, [excepting defective equipment violations within the previous
292 two years; [and]

(H) 293 [(iv) the applicant] has had no more than one at-fault accident as
294 determined by being convicted of a moving traffic violation in con-
295 nection with the accident [within the previous three years];

(I) 296 [(B) the applicant] has previously taken and passed, within the
297 previous two years, the required skills test through a state with a
298 classified licensing and testing system and behind the wheel test in
299 a representative vehicle in the class the applicant is now desiring
300 to be tested in; or

301 [(C) the applicant] operated] with a good driving record] for at least
302 two years immediately preceding the application for a commercial
303 driver's license [in] a representative vehicle that the applicant cur-

(1) (A)

which could result in the license of the driver being revoked, suspended or canceled or the driver being disqualified pursuant to 49 C.F.R. 383.51, effective January 1, 1991

driver's

recorded traffic accident

enumerated in

arising from two separate incidents

and

(2)

304 rently operates or expects to operate;

305 (c) the secretary may authorize a person, including an agency of
306 this or another state, an employer, a private driver training facility
307 or other private institution, or a department, agency or instrumen-
308 tality of local government, to administer the skills test specified by
309 this section, if:

310 (1) The test is the same which would otherwise be administered
311 by the state; and

312 (2) the third party has entered into an agreement with the state
313 which complies with requirements of 49 C.F.R. 383.75, effective
314 January 1, 1991.

315 (d) A commercial driver's license or commercial driver's instruc-
316 tion permit may not be issued to a person while the person is subject
317 to a disqualification from driving a commercial motor vehicle, or
318 while the person's driver's license is suspended, revoked or cancelled
319 in any state; nor shall a commercial driver's license be issued to a
320 person who has a commercial driver's license issued by any other
321 state unless the person first surrenders all such licenses, which must
322 be returned to the issuing state for cancellation.

323 ~~New Sec. 10. The division shall issue a nonresident commercial
324 driver's license to a resident of a foreign jurisdiction if the United
325 States secretary of transportation has determined that the commercial
326 motor vehicle testing and licensing standards in the foreign juris-
327 diction do not meet the testing standards established in 49 C.F.R.
328 383, effective January 1, 1991. The word "Nonresident" shall appear
329 on the face of the nonresident commercial driver's license. An ap-
330 plicant shall surrender any nonresident commercial driver's license
331 issued by another state. Prior to issuing a nonresident commercial
332 driver's license, the secretary shall establish the practical capability
333 of revoking, suspending or cancelling the nonresident commercial
334 driver's license and disqualifying that person with the same condi-
335 tions applicable to the commercial driver's license issued to a resident
336 of this state.~~

337 ~~New Sec. 11.¹⁰ (a) When applying for a commercial driver's license
338 or instruction permit, the requirements of K.S.A. 8-240, and amend-
339 ments thereto, must be complied with.~~

340 (b) When the holder of a commercial driver's license changes

341 such person's name, mailing address or residence, an application for
342 a duplicate license shall be made as provided in K.S.A. 8-246, and
343 amendments thereto.

344 (c) No person who has been a resident of this state for 30 days
345 shall drive a commercial motor vehicle under the authority of a
346 commercial driver's license issued by another jurisdiction.

347 (d) Any person who knowingly falsifies information or certifica-
348 tions required under subsection (a) is subject to suspension, revo-
349 cation or cancellation of such person's commercial driver's license
350 for a period of at least 60 consecutive days.

351 New Sec. 12.11 (a) The commercial driver's license shall be marked
352 "commercial driver's license" or "CDL," and must be, to the max-
353 imum extent practicable, tamper proof. It shall include, but not be
354 limited to, the following information:

355 (1) The requirements set out in K.S.A. 8-243, and amendments
356 thereto;

357 (2) [except for nonresident commercial driver's license,] the per-
358 son's social security number or any number or identifier deemed
359 appropriate by the state licensing authority;

360 (3) the class or type of commercial motor vehicle or vehicles
361 which the person is authorized to drive together with any endorse-
362 ments or restriction;

363 (4) the name of this state; and

364 (5) the dates between which the license is valid.

365 (b) Commercial drivers' licenses issued pursuant to K.S.A. 8-
366 234b, and amendments thereto, may be issued with the following
367 endorsements or restrictions; and the holder of a valid commercial
368 driver's license may drive all vehicles in the class for which that
369 license is issued, and all lesser classes of vehicles, except motorcycles
370 and vehicles [with] require an endorsement, unless the proper en-
371 dorsement appears on the license;

372 (1) "H" — authorizes the driver to drive a vehicle transporting
373 hazardous materials;

374 (2) "K" — restricts the driver to vehicles not equipped with
375 airbrakes;

376 (3) "T" — authorizes driving double and triple trailers;

377 (4) "P" — authorizes driving vehicles carrying passengers;

which

378 (5) "N" — authorizes driving tank vehicles;
 379 (6) "X" — represents a combination of hazardous materials and
 380 tank vehicle endorsements.

381 (c) Before issuing a commercial driver's license, the division must
 382 obtain driving record information through the commercial driver
 383 license information system, the national driver register and from
 384 each state in which the person has been licensed.

385 (d) Within 10 days after issuing a commercial driver's license,
 386 the division shall notify the commercial driver license information
 387 system of that fact, providing all information required to ensure
 388 identification of the person.

389 (e) All original licenses issued after April 1, 1992, shall expire
 390 on the fourth anniversary of the date of birth of the licensee which
 391 is nearest the date of application. All renewals thereof shall expire
 392 on every fourth anniversary of the date of birth of the licensee. No
 393 driver's license shall expire in the same calendar year in which the
 394 original license or renewal license is issued, except that if the fore-
 395 going provisions of this section shall require the issuance of a renewal
 396 license or an original license for a period of less than six calendar
 397 months, the license issued to the applicant shall expire at midnight
 398 on every fourth anniversary of the date of birth of the applicant. At
 399 least 30 days prior to the expiration of a person's license, the division
 400 shall mail a notice of expiration or renewal application to such person
 401 at the address shown on the license. All licensee's desiring to obtain
 402 a commercial driver's license shall do so between January 1, 1991,
 403 and April 1, 1992, in accordance with rules and regulations adopted
 404 by the secretary.

405 (f) When applying for renewal of a commercial driver's license,
 406 the applicant must complete the application form required by sub-
 407 section (b) of section [11] providing updated information and required
 408 certifications. If the applicant wants to retain a commercial driver's
 409 license, the applicant must take and pass a written test and [retain
 410 an endorsement, the written test for such endorsement shall be taken
 411 and passed.

412 New Sec. 18.¹² (a) Notwithstanding any other provisions of this
 413 act, a person shall not drive, operate or be in physical control of a
 414 commercial motor vehicle while having alcohol in such person's

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to

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415 system.

416 (b) A person who drives, operates or is in physical control of a
417 commercial motor vehicle while having alcohol in such person's sys-
418 tem or who refuses to take a test to determine their alcohol content
419 as provided by section [19] shall be placed out-of-service for 24 hours.

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420 New Sec. 14.³ (a) A person who drives a commercial motor ve-
421 hicle within this state is deemed to have given consent, subject to
422 provisions of K.S.A. 8-1001 *et seq.*, and amendments thereto, and
423 K.S.A. 8-1567, and amendments thereto, to take a test or tests of
424 that person's blood, breath or urine for the purpose of determining
425 that person's alcohol concentration or the presence of other drugs.

426 (b) A test or tests may be administered at the direction of a law
427 enforcement office, who after stopping or detaining the commercial
428 motor vehicle driver, has probable cause to believe that driver was
429 driving a commercial motor vehicle while having alcohol [in such
430 person's system.

or other drugs

431 New Sec. 15.⁴ Within 10 days after receiving a report of the
432 conviction of any nonresident holder of a commercial driver's license
433 for any violation of state law or local ordinance relating to motor
434 vehicle traffic control, other than parking violations, committed in
435 a commercial motor vehicle, the division shall notify the driver li-
436 censing authority in the licensing state of the conviction.

437 New Sec. 16.⁵ Notwithstanding any other provision of law to the
438 contrary, the division must furnish full information regarding the
439 driving record of any person:

who is the holder of a commercial driver's license

440 (a) To the driver license administrator of any other state, or
441 province or territory of Canada, requesting that information;

442 (b) to any employer or prospective employer upon request and
443 payment of a fee of \$6;

444 (c) to insurers upon request and payment of a fee of \$6.

445 New Sec. 17.⁶ The secretary may adopt any rules and regulations
446 necessary to carry out the provisions of this act.

447 New Sec. 18.⁷ Notwithstanding any law to the contrary, a person
448 may drive a commercial motor vehicle if the person has a commercial
449 driver's license issued by any state in accordance with the minimum
450 federal standards for the issuance of commercial motor vehicle driv-
451 ers' licenses, if the person is not suspended, revoked or cancelled;

452 and if the person is not disqualified from driving a commercial motor
453 vehicle, or subject to an out-of-service order.

454 New Sec. 19.18 (a) [On and after April 1, 1992, any] person is A
455 disqualified from driving a commercial motor vehicle for a period of
456 not less than one year if convicted of a first violation of:

457 (1) Driving a commercial motor vehicle under the influence of or both
458 alcohol or [any] controlled substance [which impairs driving ability]; a

459 (2) driving a commercial motor vehicle while the alcohol con-
460 centration of the person's blood, breath or other bodily substance
461 is 0.04 or more;

462 (3) leaving the scene of an accident involving a commercial motor
463 vehicle driven by the person;

464 (4) using a commercial motor vehicle in the commission of any refuses
465 felony as defined in this act; or

466 (5) [refusal] to submit to a test to determine the driver's alcohol or other drug
467 concentration while driving a commercial motor vehicle.

468 (b) [On and after April 1, 1992, if] any of the violations in sub- If
469 section (a) occurred while transporting a hazardous material required
470 to be placarded, the person is disqualified for a period of not less
471 than three years. A

472 (c) [On and after April 1, 1992, a] person shall be disqualified for
473 life if convicted of two or more violations of any of the offenses
474 specified in subsection (a), or any combination of those offenses,
475 arising from two or more separate incidents. The

476 (d) [On and after April 1, 1992, the] secretary of revenue may The
477 adopt rules and regulations establishing guidelines, including con-
478 ditions, under which a disqualification for life under subsection (c)
479 may be reduced to a period of not less than 10 years. A

480 (e) [On and after April 1, 1992, a] person is disqualified from
481 driving a commercial motor vehicle for life who uses a commercial
482 motor vehicle in the commission of any felony involving the man-
483 ufacture, distribution or dispensing of a controlled substance, or
484 possession with intent to manufacture, distribute or dispense a con-
485 trolled substance. A

486 (f) [On and after April 1, 1992, a] person is disqualified from A
487 driving a commercial motor vehicle for a period of not less than 60
488 days if convicted of two serious traffic violations, or 120 days if

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489 convicted of three serious traffic violations, committed in a com-
490 mercial motor vehicle arising from separate incidents occurring
491 within a three-year period.

492 (g) [On and after April 1, 1992, after] suspending, revoking or
493 cancelling a commercial driver's license, the division shall update
494 its records to reflect that action within 10 days. After suspending,
495 revoking or cancelling a nonresident commercial driver's privileges,
496 the division shall notify the licensing authority of the state which
497 issued the commercial driver's license or commercial driver's cer-
498 tificate within 10 days.

499 (h) [On and after April 1, 1992, after] suspending, revoking or
500 cancelling a commercial driver's license, the court shall include in
501 its report to the division, the specific convictions incurred and
502 whether or not the convictions occurred in a commercial motor
503 vehicle.

504 (i) [On and after April 1, 1992, upon] suspension, revocation or
505 disqualification of a commercial driver's license under this act, the
506 driver shall go to the nearest driver's license exam station and re-
507 linquish the commercial driver's license, if it is still in the licensee's
508 possession, and if authorized will be issued a [noncommercial] driver's
509 license for the period of suspension, revocation or disqualification of
510 the commercial driver's license under the same identifier number
511 for the classes of vehicles the driver is currently able to drive.

512 Sec. 20¹⁹ On and after January 1, 1991, K.S.A. 8-234b is hereby
513 amended to read as follows: 8-234b. (a) Every original driver's license
514 issued by the division shall indicate the class or classes of motor
515 vehicles which the licensee is entitled to drive. For this purpose
516 the following classes are established:

517 (1) Commercial class A motor vehicles include any combination
518 truck tractor and trailer or semitrailer combinations; truck and trailer
519 or semitrailer combinations registered for a gross weight of more
520 than 24,000 26,001 pounds or more, provided the gross weight of
521 the vehicle being towed is in excess of 10,000 pounds and all other
522 lawful combinations of vehicles registered for a gross weight of more
523 than 24,000 26,001 pounds, or more; except that, commercial class
524 A does not include a combination of vehicles that has a truck reg-
525 istered as a farm truck under subsection (2) of K.S.A. 8-143, and

After

After

Upon

class C

and upon payment of a fee of \$9

526 amendments thereto;

527 (2) commercial class B motor vehicles include any single vehicle
528 trucks registered for a gross weight of 26,001 pounds or more and
529 any such vehicle towing a vehicle with a gross weight not in excess
530 of 10,000 pounds; except, commercial class B does not include trucks
531 registered as farm trucks under subsection (2) of K.S.A. 8-143, and
532 amendments thereto;

533 (3) commercial class C motor vehicles include any single vehicle
534 trucks registered for a gross weight of less than 26,001 pounds or
535 any such vehicle towing a vehicle with a gross weight not in excess
536 of 10,000 pounds comprising:

537 (i) Vehicles designed to transport 16 or more passengers, in-
538 cluding the driver; or

539 (ii) vehicles used in the transportation of hazardous materials
540 which requires the vehicle to be placarded;

541 (4) class A motor vehicles include any combination truck tractor
542 and trailer or semitrailer combinations; truck and trailer or semi-
543 trailer combinations registered for a gross weight of 26,001 pounds
544 or more, provided the gross weight of the vehicle being towed is in
545 excess of 10,000 pounds and all other lawful combinations of vehicles
546 registered for a gross weight of 26,001 pounds, or more; except that,
547 class A does not include a combination of vehicles that has a truck
548 registered as a farm truck under subsection (2) of K.S.A. 8-143, and
549 amendments thereto;

or truck tractor

includes:

(A) Any

550 (2) (5) class B motor vehicles include any single vehicle trucks
551 registered for a gross weight of more than 24,000 pounds and
552 buses; except that class B does not include buses (other than
553 school buses, church buses and day care program buses) de-
554 signed for carrying 16 or fewer passengers 26,001 pounds, or
555 more, and any such vehicle towing a vehicle with a gross weight
556 not in excess of 10,000 pounds; and except class B does not include
557 trucks registered as farm trucks under subsection (2) of K.S.A. 8-
558 143, and amendments thereto;

(B) buses registered for a gross weight of 26,001
pounds or more, but does not include buses designed
to transport 16 or fewer passengers, including the
driver, except for school buses, church buses and day
care program buses.
Class

except that

559 (3) (6) class C motor vehicles include trucks registered for a gross
560 weight of not more than 24,000 less than 26,001 pounds; passenger
561 cars; combinations of vehicles registered for a gross weight of not
562 more than 24,000 less than 26,001 pounds; oil field pulling units

563 of any gross weight; and trucks or truck and trailer or semitrailer
564 combinations registered for a gross weight of ~~more than 24,000~~ *less*
565 *than 26,001* pounds, when the truck is registered under subsection
566 (2) of K.S.A. 8-143, *and amendments thereto*, as a farm truck; and
567 (4) (7) class D motor vehicles includes motorcycles.

568 (b) Every applicant for an original driver's license shall indicate
569 on such person's application the class or classes of motor vehicles
570 for which the applicant desires a license to drive, and the division
571 shall not issue a driver's license to any person unless such person
572 has demonstrated satisfactorily ability to exercise ordinary and rea-
573 sonable control in the operation of motor vehicles in the class or
574 classes for which the applicant desires a license to drive. The division
575 shall administer an appropriate examination of each applicant's ability
576 to drive such motor vehicles. *Except as provided in sections 1*
577 *through [19] of this act*, the director of vehicles may accept a copy
578 of the certificate of a person's road test issued to an individual under
579 the regulatory requirements of the United States department of
580 transportation, in lieu of requiring the person to demonstrate ability
581 to operate any motor vehicle or combination of vehicles, if such
582 certificate was issued not more than three years prior to the person's
583 application for a driver's license.

584 (c) Any person who is the holder of a valid driver's license which
585 entitles the person to drive class A motor vehicles may also drive
586 class B and C motor vehicles. Any person who is the holder of a
587 valid driver's license which entitles the person to drive class B motor
588 vehicles may also drive class C motor vehicles. *[Any person who is*
589 *the holder of a valid commercial class A driver's license with the*
590 *applicable endorsements also may drive a commercial class B or C*
591 *commercial vehicle and any class A, B or C vehicle. Any person*
592 *who is the holder of a valid commercial class B driver's license with*
593 *the applicable endorsements also may drive a commercial class C*
594 *commercial vehicle and any class A, B or C vehicle.]*

595 (d) The secretary of revenue shall adopt rules and regulations
596 establishing qualifications for the safe operation of the various types,
597 sizes and combinations of vehicles in each class of motor vehicles
598 established in subsection (a). *Such rules and regulations shall include*
599 *the adoption of at least the minimum qualifications for commercial*

600 *drivers' licenses contained in the commercial motor vehicle safety*
601 *act of 1986.*

602 (e) Any reference in the motor vehicle drivers' license act to a
603 class or classes of motor vehicles is a reference to the classes of
604 motor vehicles established in subsection (a), and any reference in
605 the motor vehicle drivers' license act to a classified driver's license
606 or a class of driver's license means a driver's license which restricts
607 the holder thereof to driving one or more of such classes of motor
608 vehicles.

609 (f) The secretary of revenue may enter into a contract with any
610 person, who meets the qualifications imposed on persons regularly
611 employed by the division as drivers' license examiners, to accept
612 applications for drivers' licenses and to administer the examinations
613 required for the issuance of drivers' licenses.

614 (g) Notwithstanding the provisions of subsection (a), any person
615 employed as an automotive mechanic who possesses a valid class C
616 driver's license may drive any class A or class B motor vehicle on
617 the highways for the purpose of determining the proper performance
618 of the vehicle, *except that this does not include commercial class A,*
619 *B or C vehicles.*

8 Sec. 21.^{2D} On and after January 1, 1991, K.S.A. 1988 Supp. 8-
9 235 is hereby amended to read as follows: 8-235. (a) No person,
10 except those expressly exempted, shall drive any motor vehicle upon
11 a highway in this state unless such person has a valid driver's license.
12 No person shall receive a driver's license unless and until such person
13 surrenders or with the approval of the division, lists to the division
14 all valid licenses in such person's possession issued to such person
15 by any other jurisdiction. All surrendered licenses or the information
16 listed on foreign licenses shall be returned by the division to the
17 issuing department, together with information that the licensee is
18 now licensed in a new jurisdiction. No person shall be permitted to
19 have more than one valid license at any time, ~~except those persons~~
20 ~~serving in the military services of the United States or its allies,~~
21 ~~or those specifically permitted by the division to retain such~~
22 ~~foreign license.~~

23 (b) Any person licensed under the motor vehicle drivers' license
24 act may exercise the privilege granted upon all streets and highways

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25 in this state and shall not be required to obtain any other license
 26 to exercise such privilege by any local authority. Nothing herein
 27 shall prevent cities from requiring licenses of persons who drive
 28 taxicabs or municipally franchised transit systems for hire upon city
 29 streets, to protect the public from drivers whose character or habits
 30 make them unfit to transport the public. If a license is denied, the
 31 applicant may appeal such decision to the district court of the county
 32 in which such city is located by filing within 10 days after such
 33 denial, a notice of appeal with the clerk of the district court and by
 34 filing a copy of such notice with the city clerk of the involved city.
 35 The city clerk shall certify a copy of such decision of the city gov-
 36 erning body to the clerk of the district court and the matter shall
 37 be docketed as any other cause and the applicant shall be granted
 38 a trial of such person's character and habits. The matter shall be
 39 heard by the court *de novo* in accordance with the code of civil
 40 procedure. The cost of such appeal shall be assessed in such manner
 41 as the court may direct.

42 (c) Any person operating in this state a motor vehicle, except a
 43 motorcycle, which is registered in this state other than under a
 44 temporary fifteen-day permit shall be the holder of a driver's license
 45 which is classified for the operation of such motor vehicle, and any
 46 person operating in this state a motorcycle which is registered in
 47 this state shall be the holder of a class D driver's license, except
 48 that any person operating in this state a motorcycle which is reg-
 49 istered under a temporary fifteen-day permit shall be the holder of
 50 a driver's license for any class of motor vehicles.

51 (d) No person shall drive any motorized bicycle upon a highway
 52 of this state unless: (1) Such person has a valid driver's license which
 53 entitles the licensee to drive a motor vehicle in any class or classes;
 54 or (2) such person is at least 14 years of age and has passed the
 55 written and visual examinations required for obtaining a class C
 56 driver's license, in which case the division shall issue to such person
 57 a class C license which clearly indicates such license is valid only
 58 for the operation of motorized bicycles.

59 (e) *Violation of this section shall constitute a class B*
 60 *misdemeanor.*

61 Sec. 22.²¹ K.S.A. 8-235d is hereby amended to read as follows:

and such license is not currently revoked, suspended
 or canceled

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119

62 8-235d. ~~On and after July 1, 1963,~~ Drivers' license examiners of
 63 the division shall accept original applications for drivers' licenses and
 64 instruction permits, as distinguished from applications for renewals
 65 of licenses, on forms prescribed by the division and also shall issue
 66 instruction permits. Drivers' license examiners of the division shall
 67 examine every applicant for a driver's license who is required by
 68 the provisions of the motor vehicle drivers' license act to be ex-
 69 amined. Such examination shall be held in the county where the
 70 applicant resides or at a place adjacent thereto reasonably convenient
 71 to the applicant ~~within not more than fifteen (15) 15 days from the~~
 72 ~~date the application is received,~~ and ~~Such examination shall include~~
 73 ~~a test of the applicant's eyesight, his or her the applicant's ability~~
 74 ~~to read and understand highway signs regulating, warning and di-~~
 75 ~~recting traffic, his or her the applicant's knowledge of the traffic~~
 76 ~~laws of this state, and shall include an actual demonstration of ability~~
 77 ~~to exercise ordinary and reasonable control in the operation of motor~~
 78 ~~vehicles which the class of license applied for would entitle the~~
 79 ~~applicant to drive. At the conclusion of said the examination the~~
 80 ~~examiner making the same shall make a written report as to the~~
 81 ~~result of the examination, which report shall state whether or~~
 82 ~~not such examiner finds said applicant a fit and proper person~~
 83 ~~to receive the class of license for which said applicant has~~
 84 ~~applied. Such report shall be forwarded promptly to the di-~~
 85 ~~vision. If the report is unfavorable, no license shall be issued~~
 86 ~~shall issue a license to the applicant, if the applicant has successfully~~
 87 ~~passed the examination with the class of license the applicant has~~
 88 ~~applied for.~~

or at a location established by the secretary for
 the issuance of a commercial driver's license

89 Sec. 23.² On and after January 1, 1991, K.S.A. 1988 Supp. 8-
 90 236 is hereby amended to read as follows: 8-236. (a) The following
 91 persons are exempt from the license requirements of the motor
 92 vehicle drivers' license act:

93 (1) [Any employee of the United States government while op-
 94 erating a motor vehicle owned by or leased to the United States
 95 government and being operated by the post office department or
 96 the armed forces of the United States of America on official business;

97 (2) a nonresident who is at least 16 years of age and who has in
 98 such person's immediate possession a valid license issued to such

A

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99 nonresident in such person's home state or country may operate in
 100 this state any motor vehicle in class C or D, as designated in K.S.A.
 101 8-234b, and amendments thereto; ~~or a school bus, as provided in~~
 102 ~~subsection (e) of K.S.A. 8-238, and amendments thereto;~~

(2)

103 [(3)] a nonresident who is at least 18 years of age and who has in
 104 such person's immediate possession a valid license issued to such
 105 nonresident in such person's home state or country which authorizes
 106 such person to operate any motor vehicle in class A or class B, as
 107 designated in K.S.A. 8-234b, and amendments thereto, may operate
 108 any such motor vehicle in this state, subject to the age limits ap-
 109 plicable in this state to the operation of any type or class of vehicle
 110 operated by such person;

(3)

111 [(4)] any nonresident who is at least 18 years of age, whose home
 112 state or country does not require the licensing of drivers, may operate
 113 any motor vehicle in class C or class D, as designated in K.S.A. 8-
 114 234b, and amendments thereto, for a period of not more than 90
 115 days in any calendar year, if the motor vehicle so operated is duly
 116 registered in the home state or country of such nonresident;

(4)

117 [(5)] any person while driving or operating during the hours be-
 118 tween sunrise and sunset any farm tractor or implement of husban-
 119 dry, from the farm residence to a field farmed in connection with
 120 such farm residence, or from one farm field to another.

121 (b) No exemption granted by this section shall apply to any per-
 122 son while such person's license to operate a motor vehicle is under
 123 suspension or revocation.

124 Sec. 24.²³ On and after January 1, 1991, K.S.A. 8-237 is hereby
 125 amended to read as follows: 8-237. The division of vehicles shall not
 126 issue any driver's license to any person:

127 (a) Who is under the age of 16 years, except that the division
 128 may issue a restricted class C or D license, as provided in this act,
 129 to any person who is at least 14 years of age upon the written
 130 application of the person's parent or guardian. Except as hereafter
 131 provided, the application of the parent or guardian shall be submitted
 132 to the division. The governing body of any city, by ordinance, may
 133 require the application of any person who is under 16 years of age
 134 and who resides within the city to be first submitted to the chief
 135 law enforcement officer of the city. The board of county commis-

136 sioners of any county, by resolution, may require the application of
137 any person who is under 16 years of age and who resides within
138 the county and outside the corporate limits of any city to be first
139 submitted to the chief law enforcement officer of the county. No
140 ordinance or resolution authorized by this subsection shall become
141 effective until a copy of it is transmitted to the division of vehicles.
142 The chief law enforcement officer of any city or county which has
143 adopted the ordinance or resolution authorized by this subsection
144 shall make a recommendation on the application as to the necessity
145 for the issuance of the restricted license, and the recommendation
146 shall be transmitted, with the application, to the division of vehicles.
147 If the division finds that it is necessary to issue the restricted license,
148 it shall issue a driver's license to the person.

149 A restricted class C license issued under this subsection shall
150 entitle the licensee, while possessing the license, to operate any
151 motor vehicle in class C, as designated in K.S.A. 8-234b, *and amend-*
152 *ments thereto*. A restricted class D license shall entitle the licensee,
153 while possessing such license, to operate a motorcycle. The restricted
154 license shall entitle the licensee to operate the appropriate vehicle
155 at any time: (1) While going to or from or in connection with any
156 job, employment or farm-related work; (2) on days while school is
157 in session, over the most direct and accessible route between the
158 licensee's residence and school of enrollment for the purposes of
159 school attendance; (3) when the licensee is operating a passenger
160 car, at any time when accompanied by an adult who is the holder
161 of a valid *commercial driver's license*, class A, B or C driver's license
162 and who is actually occupying a seat beside the driver; or (4) when
163 the licensee is operating a motorcycle, at any time when accompanied
164 by an adult who is the holder of a valid class D driver's license and
165 who is operating a motorcycle in the general proximity of the
166 licensee.

167 A restricted driver's license issued under this subsection is subject
168 to suspension or revocation in the same manner as any other driver's
169 license. In addition, the division may suspend the restricted driver's
170 license upon receiving satisfactory evidence that: (1) The licensee
171 has violated the restriction of the license, (2) the licensee has been
172 involved in two or more accidents chargeable to the licensee or (3)

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173 the recommendation of the chief law enforcement officer of any city
174 or county requiring the recommendation has been withdrawn. The
175 suspended license shall not be reinstated for one year or until the
176 licensee reaches the age of 16, whichever period is longer.

177 (b) Who is under the age of 18 years for the purpose of driving
178 a *commercial* or class A or B motor vehicle.

179 (c) Whose license has been suspended during the period of sus-
180 pension, or whose license has been revoked, except as provided in
181 K.S.A. 8-256, and amendments thereto.

182 (d) Who is a habitual drunkard, habitual user of narcotic drugs
183 or habitual user of any other drug to a degree which renders the
184 user incapable of safely driving a motor vehicle.

185 (e) Who has previously been adjudged to be afflicted with or
186 suffering from any mental disability or disease and who, at the time
187 of making application for a driver's license, has not been restored
188 to capacity in the manner provided by law, except that this limitation
189 shall apply to any person known to have suffered any seizure dis-
190 order, until the procedure specified in ~~subpart~~ *paragraph (7)* of
191 subsection (f) of K.S.A. 8-247, and amendments thereto, has been
192 complied with.

193 (f) Who is required by the motor vehicle drivers' license act to
194 take an examination, unless the person has successfully passed the
195 examination.

196 (g) Who is at least 16 years of age and less than 17 years of age,
197 who is applying for a driver's license for the first time since reaching
198 16 years of age and who, three times or more, has been adjudged
199 to be a traffic offender under the Kansas juvenile code or a juvenile
200 offender under the Kansas juvenile offenders code, by reason of
201 violation of one or more statutes regulating the movement of traffic
202 on the roads, streets or highways of this state, except that, in the
203 discretion of the director, the person may be issued a driver's license
204 which is restricted in the same manner as drivers' licenses issued
205 to persons under the age of 16 years. No person described by this
206 subsection shall be eligible to receive a driver's license which is not
207 restricted until the person has reached the age of 17 years.

208 Sec. 25²⁴ K.S.A. 1988 Supp. 8-238 is hereby amended to read as
209 follows: 8-228 (a) No person who is under the age of 18 years shall

is currently revoked, suspended or canceled in this
or any other state

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210 drive any school bus transporting school children or any motor ve-
 211 hicle when in use for the transportation of persons for a fee or when
 212 in use for the transportation of property, other than property owned
 213 or sold by the owner or lessee of such vehicle, for compensation.

214 (b) Notwithstanding any of the provisions of subsection (a)
 215 to the contrary, the division of vehicles, upon written appli-
 216 cation signed by a majority of the members of a board of ed-
 217 ucation of any school district or by a majority of the members
 218 of the governing authority of any nonpublic school, may issue
 219 a restricted class B driver's license to a minor over 16 years
 220 of age who has been approved and recommended in such ap-
 221 plication if the minor named shall successfully pass the ex-
 222 amination required by this act for the issuance of such license.
 223 Any restricted driver's license issued pursuant to this subsec-
 224 tion shall entitle the holder to operate all class C motor ve-
 225 hicles, but such person shall not be entitled to drive any other
 226 vehicles or combination of vehicles in class B except a school
 227 bus.

228 Sec. ~~26~~²⁵ On and after January 1, 1991, K.S.A. 8-239 is hereby
 229 amended to read as follows: 8-239. (a) Any person who is at least
 230 fourteen ~~(14)~~ 14 years of age may apply to the division for an
 231 instruction permit. The division may in its discretion, after the ap-
 232 plicant has successfully passed all parts of the examination other than
 233 the driving test, issue to the applicant an instruction permit which
 234 shall entitle the applicant while having such permit in his or her
 235 such person's immediate possession to drive a passenger car upon
 236 the public highways for a period of six ~~(6)~~ months subject to the
 237 restrictions herein contained. The division may issue an instruction
 238 or restricted instruction permit to any person who is at least fourteen
 239 ~~(14)~~ 14 years of age and under the age of sixteen ~~(16)~~ 16 years
 240 only upon the written application of a parent or guardian of the
 241 minor. The one having the instruction permit may operate a pas-
 242 senger car at any time when accompanied by an adult who is the
 243 holder of a valid *commercial driver's license*, class A, B or C driver's
 244 license, who has had at least one ~~(1)~~ year of driving experience and
 245 who is occupying a seat beside the driver. Any person who is at
 246 least fourteen ~~(14)~~ 14 years of age may apply for an instruction

247 permit to operate a motorcycle either separate from or in conjunction
248 with an instruction permit to operate a passenger car, and such
249 permit shall entitle the permittee to operate a motorcycle if he or
250 she *such person* is accompanied by an adult who is the holder of
251 a valid class D driver's license and who is riding a motorcycle in
252 the general proximity of the permittee.

253 (b) The division upon receiving proper application may issue in
254 its discretion a restricted instruction permit effective for school year
255 or for a more restricted period to an applicant who is at least ~~four-~~
256 ~~teen (14)~~ 14 years of age and who is enrolled in a driver-education
257 program which includes practice driving and which is approved by
258 the division, even though the applicant has not reached the legal
259 age to be eligible for a driver's license. Such instruction permit shall
260 entitle the permittee when said *the person* has such permit in his
261 or her *such person's* immediate possession to operate a passenger
262 car only on a designated highway or within a designated area but
263 only when an approved instructor is occupying a seat beside the
264 permittee or when such permit has been endorsed by an approved
265 instructor to operate a passenger car with a parent or guardian who
266 is the holder of a valid *commercial driver's license*, class A, B or C
267 driver's license, who has had at least one ~~(1)~~ year of driving ex-
268 perience and who is occupying a seat beside the driver.

269 (c) The division, in its discretion, may issue a temporary driver's
270 permit to an applicant for a classified driver's license permitting the
271 applicant to operate a motor vehicle within such classification while
272 the division is completing its investigation and determination of all
273 facts relative to such applicant's right to receive a driver's license.
274 The division may issue such a temporary driver's permit to any
275 applicant whose employer certifies that such permit is necessary to
276 complete seasonal agricultural operations of the employer. Any such
277 temporary driver's permit issued pursuant to this subsection shall
278 be in the immediate possession of the permittee while operating a
279 motor vehicle, and it shall be invalid on the date specified thereon,
80 which shall not be more than ~~fifteen (15)~~ 15 days after its issuance,
281 or when the applicant's license has been issued or for good cause
282 has been refused.

284 240 is hereby amended to read as follows: 8-240. (a) Every application
285 for an instruction permit shall be made upon a form furnished by
286 the division of vehicles and accompanied by a fee of \$2 for class A,
287 B or C, and \$5 for all commercial classes. Every other application
288 shall be made upon a form furnished by the division and accompanied
289 by an examination fee of \$3 and by the proper fee for the license
290 for which the application is made. If the applicant is not required
291 to take an examination the examination fee shall not be required.
292 The examination shall consist of three tests, as follows: (1) Vision;
293 (2) written; and (3) driving. If the applicant fails the vision test, the
294 applicant may have correction of vision made and take the vision
295 test again without any additional fee. If an applicant fails the written
296 test, the applicant may take such test again upon the payment of
297 an additional examination fee of \$1.50. If an applicant fails the driving
298 test, the applicant may take such test again upon the payment of
299 an additional examination fee of \$1.50. If an applicant fails to pass
300 all three of the tests within a period of six months from the date of
301 original application and desires to take additional tests, the applicant
302 shall file an application for reexamination upon a form furnished by
303 the division, which shall be accompanied by a reexamination fee of
304 \$3. Upon the filing of such application and the payment of such
305 reexamination fee, the applicant shall be entitled to reexamination
306 in like manner and subject to the additional fees and time limitation
307 as provided for examination on an original application. If the applicant
308 passes the reexamination, the applicant shall be issued the classified
309 driver's license for which the applicant originally applied, which
310 license shall be issued to expire as if the applicant had passed the
311 original examination.

312 (b) Every application shall state the name, date of birth, sex and
313 residence address of the applicant, and briefly describe the applicant,
314 and shall state whether the applicant has theretofore been licensed
315 as a driver, and, if so, when and by what state or country, and
316 whether any such license has ever been suspended or revoked, or
317 whether an application has ever been refused, and, if so, the date
318 of and reason for such suspension, revocation or refusal. *In addition*
319 *to the above criteria, applications for commercial drivers' licenses*
320 *and instruction permits for commercial licenses must include the*

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321 following: The applicant's social security number[[] unless the appli-
322 cation is for a nonresident commercial driver's license[]]; the person's
323 signature; the person's color photograph; certifications, including
324 those required by 49 C.F.R. 383.71(a), effective January 1, 1991; a
325 consent to release driving record information; and, any other in-
326 formation required by the division.

327 (c) When an application is received from a person previously
328 licensed in another jurisdiction, the division shall request a copy of
329 the driver's record from the other jurisdiction. When received, the
330 driver's record shall become a part of the driver's record in this state
331 with the same force and effect as though entered on the driver's
332 record in this state in the original instance.

333 (d) When the division receives a request for a driver's record
334 from another licensing jurisdiction the record shall be forwarded
335 without charge.

336 (e) A fee of \$8 shall be charged for a class C driver's license, a
337 fee of \$5 shall be charged for a class D driver's license and, a fee
338 of \$12 shall be charged for a class A or B driver's license and a fee
339 of \$12 for any class of commercial license. A fee of \$10 shall be
340 charged for each commercial driver's license endorsement, except air
341 brake endorsements which shall have no charge.

342 If one fails to make an original application or renewal application
343 for a driver's license within the time required by law, or fails to
344 make application within 60 days after becoming a resident of Kansas,
345 a penalty of \$1 shall be added to the fee charged for the driver's
346 license.

347 [(f) Whenever any person, after applying for or receiving a com-
348 mercial driver's license, moves from the address named in such
349 application or in the license issued to such person, or when the
350 name of the licensee is changed by marriage or otherwise, such
351 person, within 10 days, shall notify the division, in writing, of such
352 person's old and new addresses or of such former and new names
353 and of the number of any commercial driver's license then held by
354 such person.]

355 (g) No person who has been a resident of this state for 30 days
356 may drive a commercial motor vehicle under the authority of a
57 commercial driver's license issued by another jurisdiction.]

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359 ²⁷ Sec. 28. On and after January 1, 1991, K.S.A. 8-241 is hereby
 360 amended to read as follows: 8-241. *Except as provided in sections*
 361 *1 through [19] of this act*, any person licensed to operate a motor
 362 vehicle in this state shall submit to an examination whenever: (a)
 363 The division of vehicles shall have good cause to believe that such
 364 person is incompetent or otherwise not qualified to be licensed; or
 365 (b) such person has been convicted of a violation of K.S.A. 8-1567,
 366 *and amendments thereto*. At least five (5) days' written notice of the
 367 examination shall be given to the licensee; ~~and~~. The examination
 368 administered ~~hereunder~~ shall be at least equivalent to the exami-
 369 nation required by subsection (f) of K.S.A. 8-247, *and amendments*
 370 *thereto*, with such additional tests as the division deems necessary.
 371 Upon the conclusion of such examination the division shall take action
 372 as may be appropriate and may suspend or revoke the license of
 373 such person or permit the licensee to retain such license, or may
 374 issue a license subject to restrictions as permitted under K.S.A. 8-
 375 245, *and amendments thereto*. Refusal or neglect of the licensee to
 376 submit to such examination shall be grounds for suspension or re-
 377 vocation of the license.

18

377 ²⁸ Sec. 29. K.S.A. 1988 Supp. 8-243 is hereby amended to read as
 378 follows: 8-243. (a) Upon payment of the required fee, the division
 379 shall issue to every applicant qualifying ~~therefor~~ under the provisions
 380 of this act the driver's license as applied for, which license shall bear
 381 thereon the class or classes of motor vehicles which the licensee is
 382 entitled to drive, a distinguishing number assigned to the licensee,
 383 *which may be the licensee's social security number*, the name, date
 384 of birth, residence address, and a brief description of the licensee,
 385 a colored photograph of the licensee, a facsimile of the signature of
 386 the licensee or a space upon which the licensee shall write such
 387 licensee's usual signature with pen and ink immediately upon receipt
 388 of the license and the statement provided for in subsection (b). No
 389 driver's license shall be valid until it has been so signed by the
 390 licensee, and except as ~~hereinafter~~ provided, no driver's license
 391 issued by the division ~~on and after the effective date of this act~~
 392 shall be valid until a colored photograph of such licensee has been
 393 placed on the driver's license. At the time a driver's license is issued
 394 the photograph of the licensee shall have a background of one color

395 if the licensee is then a person under 21 years of age and a back-
396 ground of a different color if the licensee is a person 21 years of
397 age or older. Such background colors shall be selected by the director
398 of vehicles and the colors selected shall be used consistently. The
399 secretary of revenue shall prescribe a fee of not less than \$.50 nor
400 more than \$1, and upon payment of such fee the division shall cause
401 a colored photograph of such applicant to be placed on the driver's
402 license. Upon payment of such fee prescribed by the secretary of
403 revenue, plus payment of the fee required by K.S.A. 8-246, and
404 amendments thereto, for issuance of a new license, the division shall
405 issue to such licensee a new license containing a colored photograph
406 of such licensee. A driver's license which does not contain a colored
407 photograph of the licensee as required ~~herein~~ may be issued to
408 persons ~~hereinafter~~ exempted from such requirement. Any such
409 license shall be valid for the purposes of the motor vehicle drivers'
410 license act and the division shall set forth upon such driver's license
411 the words "valid without photo." Any person who is outside the
412 state and for whom the division provides for renewal of the driver's
413 license by mail is exempt from the requirement to have a colored
414 photograph of such person placed on such person's driver's license.
415 Any person belonging to a religious organization which has a basic
416 objection to having their picture taken may sign a statement to that
417 effect and such person shall then be exempt from the picture re-
418 quirements of this section.

419 (b) All Kansas drivers' licenses shall contain a form which pro-
420 vides a statement for making a gift of all or any part of the body of
421 the licensee in accordance with the uniform anatomical gift act. The
422 statement to be effective shall be signed by the licensee in the
423 presence of two witnesses who shall sign the statement in the pres-
424 ence of the donor. The gift becomes effective upon the death of the
425 donor. Delivery of the license during the donor's lifetime is not
426 necessary to make a valid gift. The gift shall become invalidated
427 upon expiration, cancellation, revocation or suspension of the license,
428 and the gift must be renewed upon renewal of each license.

429 Sec. 26²⁹. On and after January 1, 1991, K.S.A. 8-252 is hereby
430 amended to read as follows: 8-252. The division is authorized to
431 suspend or revoke the driver's license of any resident of this state

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432 upon receiving notice of the conviction of such person in another
 433 state of an offense ~~therein~~ which, if committed in this state, would
 434 be grounds for the suspension or revocation of a driver's license.
 435 Any suspension or revocation of a driver's license by the division
 436 pursuant to this section shall be for a specific period of time des-
 437 ignated in the division's order of suspension, not to exceed the period
 438 of time for which such person's privilege to drive in said ~~the~~ other
 439 state was suspended or revoked for such offense, but in no event
 440 shall any suspension or revocation pursuant to this section exceed
 441 one ~~(1)~~ year, *except as provided in sections 1 through [19] of this*
 442 *act.* The return of a person's license after the expiration of the period
 443 of any suspension hereunder, and the granting of a new license upon
 444 application of a person following the expiration of the period of any
 445 revocation hereunder, shall not be conditioned upon the restoration
 446 of such person's privilege to operate a motor vehicle by the state
 447 in which such person was convicted.

448 Sec. ~~21~~³⁰ On and after January 1, 1991, K.S.A. 1988 Supp. 8-
 449 254 is hereby amended to read as follows: 8-254. (a) Subject to the
 450 provisions of subsection (b), the division shall revoke a person's
 451 driving privileges upon receiving a record of the person's conviction
 452 of any of the following offenses, *including municipal violations*, when
 453 the conviction has become final, or upon receiving a record of a
 454 person's adjudication as a juvenile offender for commission of an act
 455 which, if committed by a person 18 or more years of age, would
 456 constitute any of the following offenses when the adjudication has
 457 become final:

458 (1) Aggravated vehicular homicide, if the crime is committed
 459 while committing a violation of K.S.A. 8-1566 or 8-1568, and amend-
 460 ments thereto, or the ordinance of a city or resolution of a county
 461 which prohibits any acts prohibited by those statutes;

462 (2) vehicular homicide;

463 (3) vehicular battery, if the crime is committed while committing
 464 a violation of K.S.A. 8-1566 or 8-1568, and amendments thereto, or
 465 the ordinance of a city or resolution of a county which prohibits the
 466 acts prohibited by those statutes;

467 (4) failure to stop and render aid as required under the laws of
 468 this state in the event of a motor vehicle accident resulting in the

18

, as defined by K.S.A. 21-3405a, and amendments thereto

, as defined by K.S.A. 21-3405, and amendments thereto

, as defined by K.S.A. 21-3405b, and amendments thereto

469 death or personal injury of another;

470 (5) conviction, or forfeiture of bail not vacated, upon ~~three~~
471 ~~charges a charge~~ of reckless driving [committed within a period of
472 12 months within the state of Kansas];

473 (6) conviction, or forfeiture of bail not vacated of any felony in
474 the commission of which a motor vehicle is used; or

475 (7) fleeing or attempting to elude a police officer as provided in
476 K.S.A. 8-1568, and amendments thereto, or conviction of violation
477 of an ordinance of any city or a law of another state which is in
478 substantial conformity with such statute.

479 (b) In lieu of revoking a person's driving privileges as provided
480 by subsection (a), the court in which the person is convicted or
481 adjudicated may place restrictions on the person's driving privileges
482 as provided by K.S.A. ~~1987~~ 1988 Supp. 8-292, and amendments
483 thereto. *Driving privileges are to be automatically revoked if the*
484 *violation which leads to the subsequent conviction occurs in a com-*
485 *mmercial motor vehicle, as defined in section 4 of this act.*

, unless the violation was committed while operat-
ing a commercial motor vehicle, as defined in sec-
tion 4 of this act

486 Sec. ~~32~~³¹ On and after January 1, 1991, K.S.A. 1988 Supp. 8-
487 256 is hereby amended to read as follows: 8-256. (a) The division
488 shall not suspend a person's license to operate a motor vehicle on
489 the public highways for a period of more than one year, except as
490 permitted under K.S.A. 40-3104 and 40-3118, and amendments
491 thereto, and K.S.A. 8-262, 8-1219, 8-2107 or 8-2110, and amend-
492 ments thereto *or sections 1 through [19] of this act.*

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493 (b) Any person whose license to operate a motor vehicle on the
494 public highways has been revoked shall not be entitled to have such
495 license renewed or restored unless the revocation was for a cause
496 which has been removed, except that after the expiration of one
497 year from the date on which the revoked license was surrendered
498 to and received by the division such person may make application
499 for a new license as provided by law, *except as otherwise provided*
500 *by section [19] of this act*, but the division shall not then issue a new
501 license unless and until it is satisfied after investigation of the habits
502 and driving ability of such person that it will be safe to grant the
503 privilege of driving a motor vehicle on the public highways.

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504 Sec. ~~33~~³² On and after January 1, 1991, K.S.A. 1988 Supp. 8-
505 259 is hereby amended to read as follows: 8-259. (a) Except in the

506 case of mandatory revocation under K.S.A. 8-254, and amendments
507 thereto, or mandatory suspension under *subsection (c)* of K.S.A.
508 1988 Supp. 8-1014, the cancellation, suspension, revocation or denial
509 of a person's driving privileges by the division is subject to review
510 in accordance with the act for judicial review and civil enforcement
511 of agency actions. In the case of review of an order of suspension
512 under K.S.A. 8-1001 *et seq.*, and amendments thereto, the petition
513 for review shall be filed within 10 days after the effective date of
514 the order and venue of the action for review is the county where
515 the administrative proceeding was held. In all other cases, the time
516 for filing the petition is as provided by K.S.A. 77-613, and amend-
517 ments thereto, and venue is the county where the licensee resides.
518 The action for review shall be by trial *de novo* to the court. The
519 court shall take testimony, examine the facts of the case and deter-
520 mine whether the petitioner is entitled to driving privileges or
521 whether the petitioner's driving privileges are subject to suspension,
522 cancellation or revocation under the provisions of this act. The court
523 on review shall consider the petitioner's traffic violations record and
524 liability insurance coverage before granting a stay or other temporary
525 remedy pursuant to K.S.A. 77-616, and amendments thereto. If a
526 stay is granted, it shall be considered equivalent to any license
527 surrendered. If a stay is not granted, trial shall be set upon 20 days'
528 notice to the legal services bureau of the department of revenue.
529 No stay shall be issued if a person's driving privileges are canceled
530 pursuant to K.S.A. 8-250, and amendments thereto.

531 (b) The clerk of any court to which an appeal has been taken
532 under this section shall, within 10 days after the final disposition of
533 such appeal, forward a notification of the final disposition to the
534 division.

535 Sec. ~~24~~³³ On and after January 1, 1991, K.S.A. 1988 Supp. 8-
536 267 is hereby amended to read as follows: 8-267. All moneys received
537 under this act shall be paid over by the secretary of revenue to the
538 state treasurer who shall credit 37.5% of all moneys so received from
539 class C driver's licenses and 20% of all moneys so received from
540 class D driver's licenses and 20% of all moneys so received from
541 class A or B ~~driver's drivers'~~ licenses *and all commercial driver*
542 *licensee classes* to a special fund, which is hereby created and shall

543 be known as the "state safety fund" and who shall credit 20% of all
 544 moneys so received from class D driver's licenses to a special fund
 545 which is hereby created and shall be known as the "motorcycle safety
 546 fund." Moneys in the state safety fund and in the motorcycle safety
 547 fund shall be distributed to provide funds for driver training courses
 548 in the schools of Kansas and for the administration of this act, as
 549 the legislature shall provide. The state treasurer shall credit *[all mon-*
 550 *eys received from commercial driver license endorsements]* the balance
 551 of all moneys received under this act *[to the state highway fund.*

, including all moneys received from commercial
 driver's license endorsements,

552 Sec. 35.^{3,4} On and after January 1, 1991, K.S.A. 1988 Supp. 8-
 553 294 is hereby amended to read as follows: 8-294. (a) Any person
 554 who is at least 18 years of age may apply to the division for an
 555 instruction permit to operate a *commercial class A, B or C motor*
 556 *vehicle or a class A or class B motor vehicle*, as prescribed in K.S.A.
 557 8-234b, and amendments thereto. The division, in its discretion,
 558 after the applicant has successfully passed all parts of the examination
 559 other than the driving test, may issue to the applicant an instruction
 560 permit which shall entitle the applicant while having such permi
 561 in such person's immediate possession to drive a *commercial class*
 562 *A, B or C motor vehicle or a class A or class B motor vehicle* upon
 563 the public highways for a period of three months subject to the
 564 following restrictions: (1) The person having the instruction permit
 565 may operate a *commercial class A motor vehicle* at any time, when
 566 accompanied by a holder of a valid *commercial class A driver's li-*
 567 *cence*, who has had at least one year of driving experience and who
 568 is occupying a seat beside the driver; or

569 (2) the person having the instruction permit may operate a *com-*
 570 *mmercial class B motor vehicle* at any time, when accompanied by a
 571 holder of a valid *commercial class A or class B driver's license*, who
 572 has had at least one year of driving experience and who is occupying
 573 a seat beside the driver.

574 (3) *the person having the instruction permit may operate a com-*
 575 *mmercial class C motor vehicle at any time, when accompanied by a*
 576 *holder of a valid commercial class A, B or C driver's license, who*
 577 *has had at least one year of driving experience and who is occupying*
 578 *a seat beside the driver; or*

579 (4) *the person having the instruction permit may operate a class*

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580 A or B motor vehicle at any time, when accompanied by a holder
581 of a valid commercial class A, B or C or class A or B driver's license,
582 who has had at least one year of driving experience and who is
583 occupying a seat beside the driver.

584 (b) The secretary of revenue may adopt rules and regulations for
585 the implementation of the provisions of this section.

586 Sec. 26.³⁵ On and after January 1, 1991, K.S.A. 1988 Supp. 8-
587 1002 is hereby amended to read as follows: 8-1002. (a) Whenever a
588 test is requested pursuant to this act and results in either a test
589 failure or test refusal, a law enforcement officer's certification shall
590 be prepared. The certification shall be signed by one or more officers
591 to certify:

592 (1) With regard to a test refusal, that: (A) There existed reason-
593 able grounds to believe the person was operating or attempting to
594 operate a motor vehicle while under the influence of alcohol or drugs,
595 or both; (B) the person had been placed under arrest, was in custody
596 or had been involved in a motor vehicle accident or collision; (C) a
597 law enforcement officer had presented the person with the oral and
598 written notice required by K.S.A. 8-1001 and amendments thereto,
599 *[for commercial drivers' licenses and instruction permit holders]*, the
600 person requested was informed by the law enforcement officer re-
601 questing the test, that refusal to submit to the test will result in
602 that person being disqualified from operating a commercial motor
603 vehicle under section *[19]* of this act; and (D) the person refused to
604 submit to and complete a test as requested by a law enforcement
605 officer.

or, if operating a commercial motor vehicle, as defined in section 4 of this act

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606 (2) With regard to a test failure, that: (A) There existed reasonable
607 grounds to believe the person was operating a motor vehicle while
608 under the influence of alcohol or drugs, or both; (B) the person had
609 been placed under arrest, was in custody or had been involved in
610 a motor vehicle accident or collision; (C) a law enforcement officer
611 had presented the person with the oral and written notice required
612 by K.S.A. 8-1001 and amendments thereto, *[for commercial drivers'*
613 *licenses and instruction permit holders]*, the person was apprised of
614 the penalties outlined in section *[19]* of this act; and (D) the result
615 of the test showed that the person had an alcohol concentration of
616 .10 or greater in such person's blood or breath *[or for commercial]*

or, if operating a commercial motor vehicle, as defined in section 4 of this act

18

and if the person was operating a commercial motor vehicle, as defined in section 4 of this act,

517 [drivers' licenses or instruction permit holders] an alcohol concentra-
 618 tion of .04, or greater, in such person's blood, breath or urine.

619 (3) With regard to failure of a breath test, in addition to those
 620 matters required to be certified under subsection (a)(2), that: (A) The
 621 testing equipment used was certified by the Kansas department of
 622 health and environment; (B) the testing procedures used were in
 623 accordance with the requirements set out by the Kansas department
 624 of health and environment; and (C) the person who operated the
 625 testing equipment was certified by the Kansas department of health
 626 and environment to operate such equipment.

627 (b) For purposes of this section, certification shall be complete
 628 upon signing, and no additional acts of oath, affirmation, acknowl-
 629 edgment or proof of execution shall be required. The signed cert-
 630 ification or a copy or photostatic reproduction thereof shall be
 631 admissible in evidence in all proceedings brought pursuant to this
 632 act, and receipt of any such certification, copy or reproduction shall
 633 accord the department authority to proceed as set forth herein. Any
 634 person who signs a certification submitted to the division knowing
 635 it contains a false statement is guilty of a class B misdemeanor.

636 (c) When the officer directing administration of the testing de-
 637 termines that a person has refused a test and the criteria of subsection
 638 (a)(1) have been met or determines that a person has failed a test
 639 and the criteria of subsection (a)(2) have been met, the officer shall
 640 serve upon the person notice of suspension of driving privileges
 641 pursuant to K.S.A. 1988 Supp. 8-1014, and amendments thereto. If
 642 the determination is made while the person is still in custody, service
 643 shall be made in person by the officer on behalf of the division of
 644 vehicles. In cases where a test failure is established by a subsequent
 645 analysis of a breath ~~or~~, blood or urine sample, the officer shall serve
 646 notice of such suspension in person or by another designated officer
 647 or by mailing the notice to the person at the address provided at
 648 the time of the test.

649 (d) The notice shall contain the following information: (1) The
 650 person's name, driver's license number and current address; (2) the
 651 reason and statutory grounds for the suspension; (3) the date notice
 652 is being served and the effective date of the suspension, which shall
 653 be the [45th] day after the date of [arrest or until a hearing has been]

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654 held pursuant to this section, whichever date is sooner; (4) the right
655 of the person to request an administrative hearing; and (5) the pro-
656 cedure the person must follow to request an administrative hearing.
657 The notice of suspension shall also inform the person that all cor-
658 respondence will be mailed to the person at the address contained
659 in the notice of suspension unless the person notifies the division
660 in writing of a different address or change of address. The address
661 provided will be considered a change of address for purposes of
662 K.S.A. 8-248, and amendments thereto, if the address furnished is
663 different from that on file with the division.

664 (e) If a person refuses a test or if a person is still in custody
665 when it is determined that the person has failed a test, the officer
666 shall take any license in the possession of the person and, if the
667 license is not expired, suspended, revoked or canceled, shall issue
668 a temporary license effective until the date of suspension stated in
669 the notice. If the test failure is established by a subsequent analysis
670 of a breath or blood sample, the temporary license shall be served
671 together with the notice of suspension. A temporary license issued
672 pursuant to this subsection shall bear the same restrictions and lim-
673 itations as the license for which it was exchanged. The officer shall
674 also provide the person with a copy of the officer's certification as
675 set forth in subsection (c). Within five days after the date of certi-
676 fication of the test refusal or test failure, the officer who effected
677 service shall forward the officer's certification and a copy of the notice
678 of suspension, along with any licenses taken, to the division.

679 (f) Upon receipt of the law enforcement officer's certification, the
680 division shall review the certification to determine that it meets the
681 requirements of subsection (a). Upon so determining, the division
682 shall proceed to suspend the person's driving privileges in accordance
683 with the notice of suspension previously served. If the requirements
684 of subsection (a) are not met, the division shall dismiss the admin-
685 istrative proceeding and return any license surrendered by the
686 person.

687 (g) If the person mails a written request which is postmarked
688 within 10 days after service of the notice, if by personal service, or
689 13 days after service, if by mail, the division shall schedule a hearing
690 in the county where the alleged violation occurred, or in a county

691 adjacent thereto. The licensee's request for subpoenas must be made
 692 in accordance with the notice provided pursuant to subsection (d)
 693 and may extend only to the law enforcement officer or officers cer-
 694 tifying refusal. Upon receiving a timely request for a hearing, the
 695 division shall mail to the person notice of the time, date and place
 696 of hearing in accordance with subsection (l). [The person's driving
 697 privileges shall be suspended in accordance with the notice of sus-
 698 pension served upon the person and the suspension shall not be
 699 stayed nor shall the temporary license be extended as a result of
 700 the hearing request.]

and extend the person's temporary driving
 privileges until the date set for the hearing by
 the division

701 (h) (1) If the officer certifies that the person refused the test,
 702 the scope of the hearing shall be limited to whether: (A) A law
 703 enforcement officer had reasonable grounds to believe the person
 704 was operating or attempting to operate a motor vehicle while under
 705 the influence of alcohol or drugs, or both; (B) the person was in
 706 custody or arrested for an alcohol or drug related offense or was
 707 involved in a motor vehicle accident or collision resulting in property
 708 damage, personal injury or death; (C) a law enforcement officer had
 709 presented the person with the oral and written notice required by
 710 K.S.A. 8-1001, and amendments thereto; and (D) the person refused
 711 to submit to and complete a test as requested by a law enforcement
 712 officer.

713 (2) If the officer certifies that the person failed the test, the scope
 714 of the hearing shall be limited to whether: (A) A law enforcement
 715 officer had reasonable grounds to believe the person was operating
 716 a motor vehicle while under the influence of alcohol or drugs, or
 717 both; (B) the person was in custody or arrested for an alcohol or
 718 drug related offense or was involved in a motor vehicle accident or
 719 collision resulting in property damage, personal injury or death; (C)
 720 a law enforcement officer had presented the person with the oral
 721 and written notice required by K.S.A. 8-1001, and amendments
 722 thereto; (D) the testing equipment used was reliable; (E) the person
 723 who operated the testing equipment was qualified; (F) the testing
 724 procedures used were reliable; (G) the test result determined that
 725 the person had an alcohol concentration of .10 in such person's blood
 726 or breath; and (H) the person was operating a motor vehicle.

727 (i) At a hearing pursuant to this section, or upon court review

728 of an order entered at such a hearing, an affidavit of the custodian
 729 of records at the Kansas department of health and environment
 730 stating that the breath testing device was certified and the operator
 731 of such device was certified on the date of the test shall be admissible
 732 into evidence in the same manner and with the same force and effect
 733 as if the certifying officer or employee of the Kansas department of
 734 health and environment had testified in person. Such affidavit shall
 735 be admitted to prove such reliability without further foundation re-
 736 quirement. A certified operator of a breath testing device shall be
 737 competent to testify regarding the proper procedures to be used in
 738 conducting the test.

739 (j) At a hearing pursuant to this section, or upon court review
 740 of an order entered at such hearing, in which the report of blood
 741 test results have been prepared by the Kansas bureau of investigation
 742 or other forensic laboratory of a state or local law enforcement agency
 743 are to be introduced as evidence, the report, or a copy of the report,
 744 of the findings of the forensic examiner shall be admissible into
 745 evidence in the same manner and with the same force and effect as
 746 if the forensic examiner who performed such examination, analysis,
 747 comparison or identification and prepared the report thereon had
 748 testified in person.

If no timely request for hearing is made, the

749 (k) ~~The~~ suspension period imposed pursuant to this section shall
 750 begin upon the expiration of the temporary license granted under
 751 subsection (e) whether or not a request for hearing is made. If a
 752 timely request for hearing is made, the hearing shall be held within
 753 ~~45~~ days of the date the request for hearing is received by the division.

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754 If the division is unable to hold a hearing within ~~45~~ days of the date
 755 upon which the request for hearing is received, the division ~~at the~~
 756 end of the 45-day period, shall ~~issue~~ temporary driving privileges
 757 ~~to the person to be effective~~ until the date ~~of the hearing~~ which
 758 shall be held at the earliest available opportunity. No temporary
 759 driving privileges shall be issued for continuances requested by or
 760 on behalf of the licensee. If the person whose privileges are sus-
 761 pended is a nonresident licensee, the license of the person shall be
 762 forwarded to the appropriate licensing authority in the person's state
 763 of residence if the result at the hearing is adverse to such person
 764 or if no timely request for a hearing is received.

extend the person's
 set for
 by the division
 extension of

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765 (l) All notices affirming or canceling a suspension under this section,
 766 all notices of a hearing held under this section and all issuances
 767 of temporary driving privileges pursuant to subsection (k) shall be
 768 sent by first-class mail and a U.S. post office certificate of mailing
 769 shall be obtained therefor. All notices so mailed shall be deemed
 770 received three days after mailing.

771 (m) The division shall prepare and distribute forms for use by
 772 law enforcement officers in giving the notice required by this section.

8 Sec. 27. On and after January 1, 1991, K.S.A. 1988 Supp. 8-
 9 1014 is hereby amended to read as follows: 8-1014. (a) Except as
 10 provided by subsection (d) and section [19] of this act, if a person
 11 refuses a test, the division shall, pursuant to K.S.A. 8-1002, and
 12 amendments thereto:

13 (1) On the person's first occurrence, suspend the person's driving
 14 privileges for 180 days; and

15 (2) on the person's second or a subsequent occurrence, suspend
 16 the person's driving privileges for one year.

17 (b) Except as provided by subsection (d) and section [19] of this
 18 act, if a person fails a test, the division shall, pursuant to K.S.A. 8-
 19 1002, and amendments thereto:

20 (1) On the person's first occurrence, suspend the person's driving
 21 privileges for 30 days, then restrict the person's driving privileges
 22 as provided by K.S.A. 1988 Supp. 8-1015, and amendments thereto,
 23 for an additional 60 days; and

24 (2) on the person's second or a subsequent occurrence, suspend
 25 the person's driving privileges for one year.

26 (c) Except as provided by subsection (d) and section [19] of this
 27 act, if a person has an alcohol or drug-related conviction in this
 28 state, the convicting court division shall:

29 (1) On the person's first occurrence, suspend the person's driving
 30 privileges for 30 days or until the person has completed educational
 31 and treatment programs required by the court, whichever is longer,
 32 then restrict the person's driving privileges as provided by K.S.A.
 33 1988 Supp. 8-1015, and amendments thereto, for an additional 330
 34 days; and

35 (2) on the person's second or a subsequent occurrence, suspend

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37 completed the treatment program required by the court, whichever
38 is longer.

39 (d) *Except as provided in section [19] of this act*, if a person's
40 driving privileges are subject to suspension pursuant to this section
41 for a test refusal, test failure or alcohol or drug-related conviction
42 arising from the same arrest, the period of such suspension shall not
43 exceed the longest applicable period authorized by subsection (a),
44 (b) or (c), and such suspension periods shall not be added together
45 or otherwise imposed consecutively. In addition, in determining the
46 period of such suspension as authorized by subsection (a), (b) or (c),
47 such person shall receive credit for any period of time for which
48 such person's driving privileges were suspended while awaiting any
49 hearing or final order authorized by this act.

50 If a person's driving privileges are subject to restriction pursuant
51 to this section for a test failure or alcohol or drug-related conviction
52 arising from the same arrest, the restriction periods shall not be
53 added together or otherwise imposed consecutively. In addition, in
54 determining the period of restriction, the person shall receive credit
55 for 150 days of any period of suspension imposed for a test refusal
56 arising from the same arrest.

57 (e) If the division has taken action under subsection (a) or (b)
58 and such action is stayed pursuant to K.S.A. 8-259, and amendments
59 thereto, or if temporary driving privileges are issued pursuant to
60 subsection (k) of K.S.A. 8-1002, and amendments thereto, the stay
61 or temporary driving privileges shall not prevent the court division
62 from taking the action required by subsection (c).

63 (f) ~~Upon entering an order suspending, restricting or sus-~~
64 ~~sending and restricting a person's driving privileges pursuant~~
65 ~~to this section, the court shall require the person to surrender~~
66 ~~to the court any license in the person's possession. The court~~
67 ~~shall transmit any such license to the division, together with~~
68 ~~a copy of the order. At the time provided by the order for~~
69 ~~restriction of the person's driving privileges, [The division shall~~
70 ~~require the person to surrender to the division any license in the~~
71 ~~person's possession. The] division shall issue without charge a driver's~~
72 ~~license which shall indicate on the face of the license that restrictions~~
73 ~~have been imposed on the person's driving privileges and that a~~

18

Upon suspending, restricting or suspending and
restricting a person's driving privileges pursuant to
this section, the

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74 certified copy of the order imposing the restrictions is required to
 75 be carried by the person for whom the license was issued any time
 76 the person is operating a motor vehicle on the highways of this state.
 77 If the person is a nonresident, the division shall forward a copy
 78 of the order to the motor vehicle administrator of the person's
 79 state of residence. If, at the time the order is issued, the person
 80 has completed any period of suspension required by this sec-
 81 tion, the judge shall furnish to the person a copy of the order,
 82 which shall authorize the person to drive subject to the re-
 83 strictions imposed pursuant to this section pending issuance of
 84 the restricted license as provided in this subsection.

If the person is a nonresident, the division shall forward a copy of the order to the motor vehicle administrator of the person's state of residence.

85 Sec. 28.³⁷ On and after January 1, 1991, K.S.A. 1988 Supp. 8-
 86 1015 is hereby amended to read as follows: 8-1015. (a) A driver
 87 whose violations were committed in a commercial motor vehicle are
 88 exempt from utilizing the below-stated restrictions. When subsection
 89 (b)(1) of K.S.A. 1988 Supp. 8-1014, and amendments thereto, re-
 90 quires the division to place restrictions on a person's driving priv-
 91 ileges, the division shall restrict the person's driving privileges to
 92 driving only under the following circumstances: In going to and
 93 returning from the person's place of employment; and in going to
 94 and returning from a mandated alcohol education or treatment pro-
 95 gram; and in exceptional circumstances specific to the offender.

division

96 (b) (1) When subsection (c)(1) of K.S.A. 1988 Supp. 8-1014, and
 97 amendments thereto, requires a court the division to place restric-
 98 tions on a person's driving privileges, the [court] shall restrict the
 99 person's driving privileges to driving only under the following cir-
 100 cumstances for a period of 60 days: In going to and returning from
 101 the person's place of employment; and in going to and returning
 102 from a mandated alcohol education or treatment program; and in
 103 exceptional circumstances specific to the offender.

104 (2) Upon expiration of the 60-day period provided by subsection
 105 (b)(1), the court division shall restrict the person's driving privileges
 106 as provided by K.S.A. 1987 1988 Supp. 8-292, and amendments
 107 thereto, for an additional 270 days, unless the convicting court, in
 108 lieu of such restrictions, has ordered the restrictions set out in
 109 subsection (b)(3).

110 (3) In addition to restricting a person's driving privileges as

111 provided in subsection (b)(1) and in addition to or in lieu of
 112 restricting a person's driving privileges as provided in subsec-
 113 tion (b)(2), the court Upon convicting a person of an alcohol or
 114 drug related offense, the convicting court, in lieu of the restrictions
 115 set out in subsection (b)(2), may restrict the person's driving priv-
 116 ileges to driving only a motor vehicle equipped with an ignition
 117 interlock device, approved by the division and obtained, installed
 118 and maintained at the person's expense. Any fine imposed by the
 119 court for the conviction shall be reduced by the court in an amount
 120 equal to the expense incurred by the person for obtaining, installing
 121 and maintaining the ignition interlock device.

122 (c) Upon expiration of the period of time for which restrictions
 123 are imposed pursuant to this section, the licensee may apply to the
 124 division for the return of any license previously surrendered by the
 125 licensee. If the license has expired, the person may apply to the
 126 division for a new license, which shall be issued by the division
 127 upon payment of the proper fee and satisfaction of the other con-
 128 ditions established by law, unless the person's driving privileges have
 129 been suspended or revoked prior to expiration.

130 (d) Violation of restrictions imposed under this section is a mis-
 131 demeanor subject to punishment and suspension of driving privileges
 132 as provided by K.S.A. 1987 1988 Supp. 8-291, and amendments
 133 thereto.

134 Sec. 39. On and after January 1, 1991, K.S.A. 1988 Supp. 8-
 135 1566 is hereby amended to read as follows: 8-1566. (a) Any person
 136 who drives any vehicle in willful or wanton disregard for the safety
 137 of persons or property is guilty of reckless driving.

138 (b) Except as provided in section 19, violation of this section is
 139 a misdemeanor. Upon a first conviction of a violation of this section,
 140 a person shall be sentenced to not less than five days nor more than
 141 90 days imprisonment or fined not less than \$25 nor more than \$500,
 142 or both such fine and imprisonment. On a second or subsequent
 143 conviction of a violation of this section, a person shall be sentenced
 144 to not less than 10 days nor more than six months imprisonment,
 145 or fined not less than \$50 nor more than \$500 or both such fine
 146 and imprisonment.

147 Sec. 40. On and after January 1, 1991, K.S.A. 1988 Supp. 8-

Sec. 38. On and after January 1, 1991, K.S.A. 1988
 Supp. 8-1018 is hereby amended to read as follows:
 8-1018. A test refusal or test failure shall not be a
 part of the public record and, but shall not be
 considered by any insurance company in determining the
 rate charged for any automobile liability insurance
 policy or whether to cancel any such policy under the
 provisions of subsection-(7)(e)-of K.S.A. 40-277, and
 amendments thereto.

148 1567 is hereby amended to read as follows: 8-1567. (a) No person
149 shall operate or attempt to operate any vehicle within this state
150 while:

151 (1) The alcohol concentration in the person's blood or breath, at
152 the time or within two hours after the person operated or attempted
153 to operate the vehicle, is .10 or more, *except that an alcohol con-*
154 *centration of .04, or more, shall be used for persons operating or*
155 *attempting to operate commercial motor vehicles, as defined in sec-*
156 *tion 4 of this act;*

157 (2) under the influence of alcohol;

158 (3) under the influence of any drug or combination of drugs to
159 a degree that renders the person incapable of safely driving a vehicle;
160 or

161 (4) under the influence of a combination of alcohol and any drug
162 or drugs to a degree that renders the person incapable of safely
163 driving a vehicle.

164 (b) No person shall operate or attempt to operate any vehicle
165 within this state if the person is a habitual user of any narcotic,
166 hypnotic, somnifacient or stimulating drug.

167 (c) If a person is charged with a violation of this section involving
168 drugs, the fact that the person is or has been entitled to use the
169 drug under the laws of this state shall not constitute a defense against
170 the charge.

171 (d) *If a commercial driver refuses testing or submits to a test*
172 *which discloses an alcohol concentration of .04, or more, the law*
173 *enforcement officer shall submit a sworn report to the secretary*
174 *certifying that the test was requested pursuant to subsection (a) and*
175 *that the person refused to submit to testing or submitted to a test*
176 *which disclosed an alcohol concentration of .04, or more.*

177 (e) Upon receipt of the sworn report of the law enforcement
178 officer submitted under subsection (d), the secretary shall disqualify
179 the driver from driving a commercial motor vehicle under section
180 [19] of this act.

181 (d) (f) Violation of this section is a misdemeanor. Upon a first
182 conviction of a violation of this section, a person shall be sentenced
183 to not less than 48 consecutive hours' nor more than six months'
184 imprisonment, or in the court's discretion 100 hours of public service,

185 and fined not less than \$200 nor more than \$500. The person con-
186 victed must serve at least 48 consecutive hours' imprisonment or
187 100 hours of public service either before or as a condition of any
188 grant of probation or suspension, reduction of sentence or parole.
189 In addition, the court shall enter an order which requires that the
190 person enroll in and successfully complete an alcohol and drug safety
191 action education program or treatment program as provided in K.S.A.
192 8-1008, and amendments thereto, or both the education and treat-
193 ment programs.

194 (e) (g) On a second conviction of a violation of this section, a
195 person shall be sentenced to not less than 90 days' nor more than
196 one year's imprisonment and fined not less than \$500 nor more than
197 \$1,000. The person convicted must serve at least five consecutive
198 days' imprisonment before the person is granted probation, suspen-
199 sion or reduction of sentence or parole or is otherwise released. As
200 a condition of any grant of probation, suspension of sentence or
201 parole or of any other release, the person shall be required to enter
202 into and complete a treatment program for alcohol and drug abuse
203 as provided in K.S.A. 8-1008, and amendments thereto.

204 (f) (h) On the third or a subsequent conviction of a violation of
205 this section, a person shall be sentenced to not less than 90 days'
206 nor more than one year's imprisonment and fined not less than \$1,000
207 nor more than \$2,500. The person convicted shall not be eligible
208 for release on probation, suspension or reduction of sentence or
209 parole until the person has served at least 90 days' imprisonment.
210 The court may also require as a condition of parole that such person
211 enter into and complete a treatment program for alcohol and drug
212 abuse as provided by K.S.A. 8-1008, and amendments thereto.

213 (g) (i) The court may establish the terms and time for payment
214 of any fines, fees, assessments and costs imposed pursuant to this
215 section. Any assessment and costs shall be required to be paid not
216 later than 90 days after imposed, and any remainder of the fine shall
217 be paid prior to the final release of the defendant by the court.

218 (h) (j) In lieu of payment of a fine imposed pursuant to this
219 section, the court may order that the person perform community
220 service specified by the court. The person shall receive a credit on
221 the fine imposed in an amount equal to \$5 for each full hour spent

222 by the person in the specified community service. The community
223 service ordered by the court shall be required to be performed not
224 later than one year after the fine is imposed or by an earlier date
225 specified by the court. If by the required date the person performs
226 an insufficient amount of community service to reduce to zero the
227 portion of the fine required to be paid by the person, the remaining
228 balance of the fine shall become due on that date.

229 ~~(j)~~ (k) The court shall report every conviction of a violation of
230 this section and every diversion agreement entered into in lieu of
231 further criminal proceedings or a complaint alleging a violation of
232 this section to the division. Prior to sentencing under the provisions
233 of this section, the court shall request and shall receive from the
234 division a record of all prior convictions obtained against such person
235 for any violations of any of the motor vehicle laws of this state.

236 ~~(j)~~ (l) For the purpose of determining whether a conviction is a
237 first, second, third or subsequent conviction in sentencing under
238 this section:

239 (1) "Conviction" includes being convicted of a violation of this
240 section or entering into a diversion agreement in lieu of further
241 criminal proceedings on a complaint alleging a violation of this
242 section;

243 (2) "conviction" includes being convicted of a violation of a law
244 of another state or an ordinance of any city, or resolution of any
245 county, which prohibits the acts that this section prohibits or entering
246 into a diversion agreement in lieu of further criminal proceedings
247 in a case alleging a violation of such law, ordinance or resolution;

248 (3) only convictions occurring in the immediately preceding five
249 years, including prior to the effective date of this act, shall be taken
250 into account, but the court may consider other prior convictions in
251 determining the sentence to be imposed within the limits provided
252 for a first, second, third or subsequent offender, whichever is ap-
253 plicable; and

254 (4) it is irrelevant whether an offense occurred before or after
255 conviction for a previous offense.

256 ~~(k)~~ (m) Upon conviction of a person of a violation of this section
257 or a violation of a city ordinance or county resolution prohibiting
258 the acts prohibited by this section, the court shall suspend, restrict

or suspend and restrict the person's driving privileges as provided by K.S.A. 1988 Supp. 8-1014, *and amendments thereto*.

(H) (n) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance or resolution exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(m) (o) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(n) (p) The alternatives set out in subsections (a)(1) and (2) may be pleaded in the alternative, and the state, city or county may, but shall not be required to, elect one of the two prior to submission of the case to the fact finder.

Sec. 41. K.S.A. 1988 Supp. 8-2106 is hereby amended to read as follows: 8-2106. (a) A law enforcement officer may prepare and deliver to a person a written traffic citation *on a form set out and approved by the division of motor vehicles*, if the law enforcement officer stops the person for a violation of:

(1) The uniform act regulating traffic on highways, which violation is a misdemeanor or a traffic infraction;

(2) K.S.A. 21-3610, 21-3610a, 21-3722, 21-3724, 21-3725, 40-

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296 3104, 40-3106, 41-715, 41-724, 41-804, 41-2719, 41-2720, 41-2721,
297 47-607, 66-1,111, 66-1,129, 66-1,139, 66-1,140, 66-273, 66-1314, 66-
298 1324, 66-1325, 66-1330, 66-1331, 66-1332, 68-2104, 68-2106 or sub-
299 section (b) of K.S.A. 79-34,122, and amendments thereto;

300 (3) K.S.A. 31-155 and amendments thereto involving transpor-
301 tation of bottle rockets;

302 (4) K.S.A. 66-1314 or 66-1328, and amendments thereto, and any
303 rules and regulations adopted pursuant thereto;

304 (5) any rules and regulations adopted pursuant to K.S.A. 2-1212,
305 68-2001 or 31-146, and amendments thereto; or

306 (6) any rules and regulations adopted pursuant to K.S.A. 31-133
307 and amendments thereto relating to transportation of materials or
308 fuel.

309 (b) The citation shall contain a notice to appear in court, the
310 name and address of the person, *the type of vehicle the person was*
311 *driving, whether hazardous materials were being transported,*
312 *whether an accident occurred,* the state registration number of the
313 person's vehicle, if any, the offense charged, the time and place
314 when and where the person shall appear in court, the signature of
315 the law enforcement officer, and any other pertinent information.

316 (c) The time specified in the notice to appear shall be at least
317 five days after the alleged violation unless the person charged with
318 the violation demands an earlier hearing.

319 (d) The place specified in the notice to appear shall be before a
320 judge of the district court within the county in which the offense is
321 alleged to have been committed.

322 (e) Except in the circumstances to which subsection (a) of K.S.A.
323 8-2104, and amendments thereto, apply, in the discretion of the law
324 enforcement officer, a person charged with a misdemeanor may give
325 written promise to appear in court by signing at least one copy of
326 the written citation prepared by the law enforcement officer, in which
327 event the law enforcement officer shall deliver a copy of the citation
328 to the person and shall not take the person into physical custody.

329 (f) When a person is charged with a traffic infraction, the notice
330 to appear shall provide a place where the person may make a written
331 entry of appearance, waive the right to a trial and plead guilty or
2 no contest. The notice to appear shall provide a space where the

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3 law enforcement officer shall enter the appropriate fine specified in
334 the uniform fine schedule contained in K.S.A. ~~1987~~ 1988 Supp. 8-
335 2118, and amendments thereto, for the violation charged and court
336 costs in the amount provided by law. If the notice to appear does
337 not do so, the law enforcement officer shall provide a person charged
338 with a traffic infraction a form explaining the person's right to appear
339 and right to a trial, the person's right to pay the appropriate fine
340 and court costs prior to the appearance date, and that failure to
341 either pay such fine and court costs or appear at the specified time
342 may result in suspension of the person's driver's license. The law
343 enforcement officer shall provide the person with the address of the
344 court to which the written entry of appearance, waiver of trial, plea
345 of guilty or no contest and payment of fine and court costs shall be
346 mailed.

347 (g) Any officer violating any of the provisions of this section is
348 guilty of misconduct in office and shall be subject to removal from
349 office.

350 Sec. 42. K.S.A. 1988 Supp. 12-4416 is hereby amended to read
351 as follows: 12-4416. (a) A diversion agreement shall provide that if
352 the defendant fulfills the obligations of the program described
353 therein, as determined by the city attorney, the city attorney shall
354 act to have the criminal charges against the defendant dismissed with
355 prejudice. The diversion agreement shall include specifically the
356 waiver of all rights under the law or the constitution of Kansas or
357 of the United States to a speedy arraignment, a speedy trial, and
358 the right to trial by jury. The diversion agreement may include, but
359 is not limited to, provisions concerning payment of restitution, in-
360 cluding court costs and diversion costs, residence in a specified
361 facility, maintenance of gainful employment, and participation in
362 programs offering medical, educational, vocational, social and psy-
363 chological services, corrective and preventive guidance and other
364 rehabilitative services. The diversion agreement shall state:

- 365 (1) The defendant's full name;
366 (2) the defendant's full name at the time the complaint was filed,
367 if different from the defendant's current name;
368 (3) the defendant's sex, race and date of birth;
369 (4) the crime with which the defendant is charged;

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370 (5) the date the complaint was filed; and
371 (6) the municipal court with which the agreement is filed.

372 (b) If a diversion agreement is entered into in lieu of further
373 criminal proceedings on a complaint alleging an alcohol related of-
374 fense, the diversion agreement shall include a stipulation, agreed to
375 by the defendant and the city attorney, of the facts upon which the
376 charge is based and a provision that if the defendant fails to fulfill
377 the terms of the specific diversion agreement and the criminal pro-
378 ceedings on the complaint are resumed, the proceedings, including
379 any proceedings on appeal, shall be conducted on the record of the
380 stipulation of facts relating to the complaint. In addition, the agree-
381 ment shall include a requirement that the defendant:

382 (1) Pay a fine specified by the agreement in an amount equal to
383 an amount authorized by K.S.A. 8-1567, and amendments thereto,
384 for a first offense or, in lieu of payment of the fine, perform com-
385 munity service specified by the agreement, consonant with K.S.A.
386 8-1567, and amendments thereto; and

387 (2) enroll in and successfully complete an alcohol and drug safety
388 action program or a treatment program, or both, as provided in
389 K.S.A. 8-1008, and amendments thereto, and specified by the agree-
390 ment, and pay the assessment required by K.S.A. 8-1008, and
391 amendments thereto.

392 (c) If a diversion agreement is entered into in lieu of further
393 criminal proceedings on a complaint alleging an alcohol related
394 offense, the diversion agreement may restrict the defendant's
395 driving privileges, in addition to any suspension and restriction
396 required by K.S.A. 1988 Supp. 8-1014, to driving only under
397 the following circumstances: (1) In going to or returning from
398 the person's place of employment or schooling; (2) in the course
399 of the person's employment; (3) during a medical emergency;
400 (4) in going to and returning from probation or parole meetings,
401 drug or alcohol counseling or any place the person is required
402 to go to attend an alcohol and drug safety action program as
403 provided in K.S.A. 8-1008 and amendments thereto; (5) at such
404 times of the day as may be specified by the diversion agree-
405 ment; and (6) to such places as may be specified by the di-
406 version agreement.

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07 In lieu of restricting the defendant's driving privileges as
408 provided above, or in lieu of suspending or revoking such
409 privileges, the diversion agreement may restrict the defendant's
410 driving privileges to driving only a motor vehicle equipped
411 with a functioning ignition interlock device, as defined by
412 K.S.A. 1988 Supp. 8-1013, which is approved by the division
413 of vehicles of the department of revenue and is obtained, in-
414 stalled and maintained at the defendant's expense. Any fine
415 required by this subsection shall be reduced by the diversion
416 agreement in an amount equal to the expense incurred by the
417 defendant for obtaining, installing and maintaining such device.

418 Restrictions imposed pursuant to this subsection shall be for
419 a period of not less than 90 days nor more than one year, as
420 specified by the diversion agreement.

421 Upon entering a diversion agreement restricting a person's
422 driving privileges under this subsection, the city attorney shall
423 require that the license be surrendered to the city attorney.
424 The city attorney shall transmit the license to the division of
425 vehicles of the department of revenue, together with a copy of
426 the diversion agreement. Upon its receipt, the division of ve-
427 hicles shall issue without charge a driver's license which shall
428 indicate on the face of the license that restrictions have been
429 imposed on the person's driving privileges and that a certified
430 copy of the diversion agreement imposing the restrictions is
431 required to be carried by the person for whom the license was
432 issued any time the person is operating a motor vehicle on the
433 highways of this state. If the person *entering into a diversion*
434 *agreement* is a nonresident, the city attorney shall transmit a copy
435 of the diversion agreement to the division. The division shall forward
436 a copy of the diversion agreement to the motor vehicle administrator
437 of the person's state of residence. The city attorney shall furnish
438 to any person whose driving privileges have been restricted
439 under this subsection a copy of the diversion agreement, which
440 for a period of 30 days only shall be recognized as a valid
441 Kansas driver's license pending issuance of the restricted li-
442 cense as provided in this subsection.

443 Upon expiration of the period of time for which restrictions

444 are imposed pursuant to this subsection, the licensee may apply
445 to the division for the return of the license previously surren-
446 dered by the licensee. If the license has expired, the person
447 may apply to the division for a new license, which shall be
448 issued by the division upon payment of the proper fee and
449 satisfaction of the other conditions established by law, unless
450 the person's privilege to operate a motor vehicle on the high-
451 ways of this state has been suspended or revoked prior to
452 expiration. Violation of restrictions imposed under this sub-
453 section is a misdemeanor subject to punishment and driver's
454 license suspension as provided by K.S.A. 1987 Supp. 8-201 and
455 amendments thereto.

456 (d) If a diversion agreement is entered into in lieu of further
457 criminal proceedings on a complaint alleging an alcohol related
458 offense, the diversion agreement may suspend or revoke the
459 defendant's driving privileges. Suspension or revocation im-
460 posed pursuant to this subsection shall be for a period of not
461 less than 90 days nor more than one year, as specified by the
462 diversion agreement.

463 Upon entering a diversion agreement suspending or revoking
464 a defendant's driving privileges pursuant to this subsection, the
465 city attorney shall require that such license be surrendered to
466 the city attorney. The city attorney shall transmit the license
467 to the division to be retained by the division.

468 Upon expiration of the period of time for which suspension
469 or revocation is imposed pursuant to this subsection, the li-
470 censee may apply to the division for the return of the license
471 previously surrendered by the licensee. If the license has ex-
472 pired, the person may apply to the division for a new license,
473 which shall be issued by the division upon payment of the
474 proper fee and satisfaction of the other conditions established
475 by law, unless the person's driving privileges have been oth-
476 erwise suspended or revoked prior to expiration.

477 (e) (d) If the city attorney elects to offer diversion in lieu of
478 further criminal proceedings on the complaint and the defendant
479 agrees to all of the terms of the proposed agreement, the diversion
480 agreement shall be filed with the municipal court and the municipal

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31 court shall stay further proceedings on the complaint. If the de-
482 fendant declines to accept diversion, the municipal court shall resume
483 the criminal proceedings on the complaint.

484 ~~(f)~~ (e) The city attorney shall forward to the division of vehicles
485 of the state department of revenue a copy of the diversion agreement
486 at the time such agreement is filed with the municipal court. The
487 copy of the agreement shall be made available upon request to any
488 county, district or city attorney or court.

489 Sec. 43. On and after January 1, 1991, K.S.A. 1988 Supp. 12-
490 4516 is hereby amended to read as follows: 12-4516. (a) Except as
491 provided in subsection (b), any person who has been convicted of
492 a violation of a city ordinance of this state may petition the convicting
493 court for the expungement of such conviction if three or more years
494 have elapsed since the person:

495 (1) Satisfied the sentence imposed; or
496 (2) was discharged from probation, parole or a suspended
497 sentence.

498 (b) No person may petition for expungement until five or more
499 years have elapsed since the person satisfied the sentence imposed
500 or was discharged from probation, parole, conditional release or a
501 suspended sentence, if such person was convicted of the violation
502 of a city ordinance which would also constitute:

503 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and
504 amendments thereto;

505 (2) a violation of K.S.A. 8-1567, and amendments thereto;

506 (3) driving while the privilege to operate a motor vehicle on the
507 public highways of this state has been cancelled, suspended or re-
508 voked, as prohibited by K.S.A. 8-262, and amendments thereto;

509 (4) perjury resulting from a violation of K.S.A. 8-261a, and
510 amendments thereto;

511 (5) a violation of the provisions of the fifth clause of K.S.A. 8-
512 142, and amendments thereto, relating to fraudulent applications;

513 (6) any crime punishable as a felony wherein a motor vehicle was
514 used in the perpetration of such crime;

515 (7) failing to stop at the scene of an accident and perform the
516 duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments
517 thereto; or

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518 (8) a violation of the provisions of K.S.A. 40-3104, and amend-
519 ments thereto, relating to motor vehicle liability insurance coverage;
520 or

521 (9) a violation of K.S.A. 21-3405b, and amendments thereto.

522 (c) When a petition for expungement is filed, the court shall set
523 a date for a hearing thereon and shall give notice thereof to the
524 prosecuting attorney. The petition shall state: (1) The defendant's
525 full name; (2) the full name of the defendant at the time of arrest
526 and conviction, if different than the defendant's current name; (3)
527 the defendant's sex, race, and date of birth; (4) the crime for which
528 the defendant was convicted; (5) the date of the defendant's con-
529 viction; and (6) the identity of the convicting court. A municipal
530 court may prescribe a fee to be charged as costs for a person pe-
531 titioning for an order of expungement pursuant to this section. Any
532 person who may have relevant information about the petitioner may
533 testify at the hearing. The court may inquire into the background
534 of the petitioner and shall have access to any reports or records
535 relating to the petitioner that are on file with the secretary of cor-
536 rections or the Kansas parole board.

537 (d) At the hearing on the petition, the court shall order the
538 petitioner's conviction expunged if the court finds that:

539 (1) The petitioner has not been convicted of a felony in the past
540 two years and no proceeding involving any such crime is presently
541 pending or being instituted against the petitioner;

542 (2) the circumstances and behavior of the petitioner warrant the
543 expungement; and

544 (3) the expungement is consistent with the public welfare.

545 (e) When the court has ordered a conviction expunged, the order
546 of expungement shall state the information required to be contained
547 in the petition. The clerk of the court shall send a certified copy of
548 the order of expungement to the federal bureau of investigation, the
549 Kansas bureau of investigation, the secretary of corrections and any
550 other criminal justice agency which may have a record of the con-
551 viction. After the order of expungement is entered, the petitioner
552 shall be treated as not having been convicted of the crime, except
553 that:

554 (1) Upon conviction for any subsequent crime, the conviction that

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555 was expunged may be considered as a prior conviction in determining
556 the sentence to be imposed;

557 (2) the petitioner shall disclose that the conviction occurred if
558 asked about previous convictions (A) in any application for employ-
559 ment as a detective with a private detective agency, as defined by
560 K.S.A. 75-7b01, and amendments thereto; as security personnel with
561 a private patrol operator, as defined by K.S.A. 75-7b01, and amend-
562 ments thereto; with a criminal justice agency, as defined by K.S.A.
563 22-4701, and amendments thereto; or with an institution, as defined
564 in K.S.A. 76-12a01, and amendments thereto, of the department of
565 social and rehabilitation services; (B) in any application for admission,
566 or for an order of reinstatement, to the practice of law in this state;
567 (C) to aid in determining the petitioner's qualifications for employ-
568 ment with the Kansas lottery or for work in sensitive areas within
569 the Kansas lottery as deemed appropriate by the executive director
570 of the Kansas lottery; ~~or~~ (D) to aid in determining the petitioner's
571 qualifications for executive director of the Kansas racing commission,
572 for employment with the commission or for work in sensitive areas
573 in parimutuel racing as deemed appropriate by the executive director
574 of the commission, or to aid in determining qualifications for licen-
575 sure or renewal of licensure by the commission; *or (E) upon ap-*
576 *plication for a commercial driver's license under sections 1 through*

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578 (3) the court, in the order of expungement, may specify other
579 circumstances under which the conviction is to be disclosed; and

580 (4) the conviction may be disclosed in a subsequent prosecution
581 for an offense which requires as an element of such offense a prior
582 conviction of the type expunged.

583 (f) Whenever a person is convicted of an ordinance violation,
584 pleads guilty and pays a fine for such a violation, is placed on parole
585 or probation or is granted a suspended sentence for such a violation,
586 the person shall be informed of the ability to expunge the conviction.

587 (g) Subject to the disclosures required pursuant to subsection (e),
588 in any application for employment, license or other civil right or
589 privilege, or any appearance as a witness, a person whose conviction
590 of an offense has been expunged under this statute may state that
591 such person has never been convicted of such offense.

32 (h) Whenever the record of any conviction has been expunged
593 under the provisions of this section or under the provisions of any
594 other existing or former statute, the custodian of the records of arrest,
595 conviction and incarceration relating to that crime shall not disclose
596 the existence of such records, except when requested by:

597 (1) The person whose record was expunged;

598 (2) a criminal justice agency, private detective agency or a private
599 patrol operator, and the request is accompanied by a statement that
600 the request is being made in conjunction with an application for
601 employment with such agency or operator by the person whose
602 record has been expunged;

603 (3) a court, upon a showing of a subsequent conviction of the
604 person whose record has been expunged;

605 (4) the secretary of social and rehabilitation services, or a desig-
606 nee of the secretary, for the purpose of obtaining information relating
607 to employment in an institution, as defined in K.S.A. 76-12a01, and
608 amendments thereto, of the department of social and rehabilitation
609 services of any person whose record has been expunged;

610 (5) a person entitled to such information pursuant to the terms
611 of the expungement order;

612 (6) a prosecuting attorney, and such request is accompanied by
613 a statement that the request is being made in conjunction with a
614 prosecution of an offense that requires a prior conviction as one of
615 the elements of such offense;

616 (7) the supreme court, the clerk or disciplinary administrator
617 thereof, the state board for admission of attorneys or the state board
618 for discipline of attorneys, and the request is accompanied by a
619 statement that the request is being made in conjunction with an
620 application for admission, or for an order of reinstatement, to the
621 practice of law in this state by the person whose record has been
622 expunged;

623 (8) the Kansas lottery, and the request is accompanied by a state-
624 ment that the request is being made to aid in determining quali-
625 fications for employment with the Kansas lottery or for work in
626 sensitive areas within the Kansas lottery as deemed appropriate by
627 the executive director of the Kansas lottery; or

28 (9) the governor or the Kansas racing commission, or a designee

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529 of the commission, and the request is accompanied by a statement
630 that the request is being made to aid in determining qualifications
631 for executive director of the commission, for employment with the
632 commission, for work in sensitive areas in parimutuel racing as
633 deemed appropriate by the executive director of the commission or
634 for licensure, renewal of licensure or continued licensure by the
635 commission.

636 Sec. 44. On and after January 1, 1991, K.S.A. 21-4619 is hereby
637 amended to read as follows: 21-4619. (a) Except as provided in
638 subsections (b) and (c), any person convicted in this state of a traffic
639 infraction, misdemeanor or a class D or E felony may petition the
640 convicting court for the expungement of such conviction if three or
641 more years have elapsed since the person: (1) Satisfied the sentence
642 imposed; or (2) was discharged from probation, a community cor-
643 rectional services program, parole, conditional release or a suspended
644 sentence.

645 (b) Except as provided in subsection (c), no person may petition
646 for expungement until five or more years have elapsed since the
647 person satisfied the sentence imposed or was discharged from pro-
648 bation, a community correctional services program, parole, condi-
649 tional release or a suspended sentence, if such person was convicted
650 of a class A, B or C felony or:

651 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and
652 amendments thereto, or as prohibited by any law of another state
653 which is in substantial conformity with that statute;

654 (2) a violation of K.S.A. 8-1567, and amendments thereto, or a
655 violation of any law of another state, which declares to be unlawful
656 the acts prohibited by that statute;

657 (3) driving while the privilege to operate a motor vehicle on the
658 public highways of this state has been cancelled, suspended or re-
659 voked, as prohibited by K.S.A. 8-262, and amendments thereto, or
660 as prohibited by any law of another state which is in substantial
661 conformity with that statute;

662 (4) perjury resulting from a violation of K.S.A. 8-261a, and
663 amendments thereto, or resulting from the violation of a law of
664 another state which is in substantial conformity with that statute;

665 (5) violating the provisions of the fifth clause of K.S.A. 8-142,

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66 and amendments thereto, relating to fraudulent applications or vi-
667 olating the provisions of a law of another state which is in substantial
668 conformity with that statute;

669 (6) any crime punishable as a felony wherein a motor vehicle was
670 used in the perpetration of such crime;

671 (7) failing to stop at the scene of an accident and perform the
672 duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments
673 thereto, or required by a law of another state which is in substantial
674 conformity with those statutes; or

675 (8) violating the provisions of K.S.A. 40-3104 and amendments
676 thereto, relating to motor vehicle liability insurance coverage; or

677 (9) a violation of K.S.A. 21-3405b, and amendments thereto.

678 (c) There shall be no expungement of convictions for the following
679 offenses: (1) Indecent liberties with a child as defined in K.S.A. 21-
680 3503, and amendments thereto; (2) aggravated indecent liberties with
681 a child as defined in K.S.A. 21-3504, and amendments thereto; (3)
682 aggravated criminal sodomy as defined in K.S.A. 21-3506, and
683 amendments thereto; (4) enticement of a child as defined in K.S.A.
684 21-3509, and amendments thereto; (5) indecent solicitation of a child
685 as defined in K.S.A. 21-3510, and amendments thereto; (6) aggra-
686 vated indecent solicitation of a child as defined in K.S.A. 21-3511,
687 and amendments thereto; (7) sexual exploitation of a child as defined
688 in K.S.A. 21-3516, and amendments thereto; (8) aggravated incest
689 as defined in K.S.A. 21-3603, and amendments thereto; (9) endan-
690 gering a child as defined in K.S.A. 21-3608, and amendments thereto;
691 or (10) abuse of a child as defined in K.S.A. 21-3609, and amend-
692 ments thereto.

693 (d) When a petition for expungement is filed, the court shall set
694 a date for a hearing thereon and shall give notice thereof to the
695 prosecuting attorney. The petition shall state: (1) The defendant's
696 full name; (2) the full name of the defendant at the time of arrest
697 and conviction, if different than the defendant's current name; (3)
698 the defendant's sex, race and date of birth; (4) the crime for which
699 the defendant was convicted; (5) the date of the defendant's con-
700 viction; and (6) the identity of the convicting court. There shall be
701 no docket fee for filing a petition pursuant to this section. All pe-
2 titions for expungement shall be docketed in the original criminal

703 action. Any person who may have relevant information about the
704 petitioner may testify at the hearing. The court may inquire into
705 the background of the petitioner and shall have access to any reports
706 or records relating to the petitioner that are on file with the secretary
707 of corrections or the Kansas parole board.

708 (e) At the hearing on the petition, the court shall order the
709 petitioner's conviction expunged if the court finds that:

710 (1) The petitioner has not been convicted of a felony in the past
711 two years and no proceeding involving any such crime is presently
712 pending or being instituted against the petitioner;

713 (2) the circumstances and behavior of the petitioner warrant the
714 expungement; and

715 (3) the expungement is consistent with the public welfare.

716 (f) When the court has ordered a conviction expunged, the order
717 of expungement shall state the information required to be contained
718 in the petition. The clerk of the court shall send a certified copy of
719 the order of expungement to the federal bureau of investigation, the
720 Kansas bureau of investigation, the secretary of corrections and any
721 other criminal justice agency which may have a record of the con-
722 viction. After the order of expungement is entered, the petitioner
723 shall be treated as not having been convicted of the crime, except
724 that:

725 (1) Upon conviction for any subsequent crime, the conviction that
726 was expunged may be considered as a prior conviction in determining
727 the sentence to be imposed;

728 (2) the petitioner shall disclose that the conviction occurred if
729 asked about previous convictions (A) in any application for employ-
730 ment as a detective with a private detective agency, as defined by
731 K.S.A. 75-7b01, and amendments thereto; as security personnel with
732 a private patrol operator, as defined by K.S.A. 75-7b01, and amend-
733 ments thereto; with a criminal justice agency, as defined by K.S.A.
734 22-4701, and amendments thereto; or with an institution, as defined
735 in K.S.A. 76-12a01, and amendments thereto, of the department of
736 social and rehabilitation services; (B) in any application for admission,
737 or for an order of reinstatement, to the practice of law in this state;
738 (C) to aid in determining the petitioner's qualifications for employ-
739 ment with the Kansas lottery or for work in sensitive areas within

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740 the Kansas lottery as deemed appropriate by the executive director
741 of the Kansas lottery or; (D) to aid in determining the petitioner's
742 qualifications for executive director of the Kansas racing commission,
743 for employment with the commission or for work in sensitive areas
744 in parimutuel racing as deemed appropriate by the executive director
745 of the commission, or to aid in determining qualifications for licen-
746 sure or renewal of licensure by the commission; *or (E) upon ap-*
747 *plication for a commercial driver's license under sections 1 through*

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749 (3) the court, in the order of expungement, may specify other
750 circumstances under which the conviction is to be disclosed;

751 (4) the conviction may be disclosed in a subsequent prosecution
752 for an offense which requires as an element of such offense a prior
753 conviction of the type expunged; and

754 (5) upon commitment to the custody of the secretary of correc-
755 tions, any previously expunged record in the possession of the sec-
756 retary of corrections may be reinstated and the expungement
757 disregarded, and the record continued for the purpose of the new
758 commitment.

759 (g) Whenever a person is convicted of a crime, pleads guilty and
760 pays a fine for a crime, is placed on parole or probation, is assigned
761 to a community correctional services program, is granted a suspended
762 sentence or is released on conditional release, the person shall be
763 informed of the ability to expunge the conviction.

764 (h) Subject to the disclosures required pursuant to subsection (f),
765 in any application for employment, license or other civil right or
766 privilege, or any appearance as a witness, a person whose conviction
767 of a crime has been expunged under this statute may state that such
768 person has never been convicted of such crime, but the expungement
769 of a felony conviction does not relieve an individual of complying
770 with any state or federal law relating to the use or possession of
771 firearms by persons convicted of a felony.

772 (i) Whenever the record of any conviction has been expunged
773 under the provisions of this section or under the provisions of any
774 other existing or former statute, the custodian of the records of arrest,
775 conviction and incarceration relating to that crime shall not disclose
776 the existence of such records, except when requested by:

- 777 (1) The person whose record was expunged;
778 (2) a criminal justice agency, private detective agency or a private
779 patrol operator, and the request is accompanied by a statement that
780 the request is being made in conjunction with an application for
781 employment with such agency or operator by the person whose
782 record has been expunged;
783 (3) a court, upon a showing of a subsequent conviction of the
784 person whose record has been expunged;
785 (4) the secretary of social and rehabilitation services, or a desig-
786 nee of the secretary, for the purpose of obtaining information relating
787 to employment in an institution, as defined in K.S.A. 76-12a01 and
788 amendments thereto, of the department of social and rehabilitation
789 services of any person whose record has been expunged;
790 (5) a person entitled to such information pursuant to the terms
791 of the expungement order;
792 (6) a prosecuting attorney, and such request is accompanied by
793 a statement that the request is being made in conjunction with a
794 prosecution of an offense that requires a prior conviction as one of
795 the elements of such offense;
796 (7) the supreme court, the clerk or disciplinary administrator
797 thereof, the state board for admission of attorneys or the state board
798 for discipline of attorneys, and the request is accompanied by a
799 statement that the request is being made in conjunction with an
800 application for admission, or for an order of reinstatement, to the
801 practice of law in this state by the person whose record has been
802 expunged;
803 (8) the Kansas lottery, and the request is accompanied by a state-
804 ment that the request is being made to aid in determining quali-
805 fications for employment with the Kansas lottery or for work in
806 sensitive areas within the Kansas lottery as deemed appropriate by
807 the executive director of the Kansas lottery; or
808 (9) the governor or the Kansas racing commission, or a designee
809 of the commission, and the request is accompanied by a statement
810 that the request is being made to aid in determining qualifications
811 for executive director of the commission, for employment with the
812 commission, for work in sensitive areas in parimutuel racing as
813 deemed appropriate by the executive director of the commission or

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814 for licensure, renewal of licensure or continued licensure by the
815 commission.

816 Sec. 45. K.S.A. 22-2909 is hereby amended to read as follows:
817 22-2909. (a) A diversion agreement shall provide that if the defendant
818 fulfills the obligations of the program described therein, as deter-
819 mined by the county or district attorney, the county or district
820 attorney shall act to have the criminal charges against the defendant
821 dismissed with prejudice. The diversion agreement shall include
822 specifically the waiver of all rights under the law or the constitution
823 of Kansas or of the United States to a speedy arraignment, prelim-
824 inary examinations and hearings, and a speedy trial, and in the case
825 of diversion under subsection (c) waiver of the right to trial by jury.
826 The diversion agreement may include, but is not limited to, pro-
827 visions concerning payment of restitution, including court costs and
828 diversion costs, residence in a specified facility, maintenance of gain-
829 ful employment, and participation in programs offering medical, ed-
830 ucational, vocational, social and psychological services, corrective and
831 preventive guidance and other rehabilitative services.

832 (b) The diversion agreement shall state: (1) The defendant's full
833 name; (2) the defendant's full name at the time the complaint was
834 filed, if different from the defendant's current name; (3) the de-
835 fendant's sex, race and date of birth; (4) the crime with which the
836 defendant is charged; (5) the date the complaint was filed; and (6)
837 the district court with which the agreement is filed.

838 (c) If a diversion agreement is entered into in lieu of further
839 criminal proceedings on a complaint alleging a violation of K.S.A.
840 8-1567, and amendments thereto, the diversion agreement shall in-
841 clude a stipulation, agreed to by the defendant and the county or
842 district attorney, of the facts upon which the charge is based and a
843 provision that if the defendant fails to fulfill the terms of the specific
844 diversion agreement and the criminal proceedings on the complaint
845 are resumed, the proceedings, including any proceedings on appeal,
846 shall be conducted on the record of the stipulation of facts relating
847 to the complaint. In addition, the agreement shall include a re-
848 quirement that the defendant:

849 (1) Pay a fine specified by the agreement in an amount equal to
850 an amount authorized by K.S.A. 8-1567, and amendments thereto,

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1 for a first offense or, in lieu of payment of the fine, perform com-
852 munity service specified by the agreement, in accordance with
853 K.S.A. 8-1567, and amendments thereto; and

854 (2) enroll in and successfully complete an alcohol and drug safety
855 action program or a treatment program, or both, as provided in
856 K.S.A. 8-1008, and amendments thereto, and specified by the agree-
857 ment, and pay the assessment required by K.S.A. 8-1008, and
858 amendments thereto.

859 (d) If a diversion agreement is entered into in lieu of further
860 criminal proceedings on a complaint alleging an alcohol related
861 offense, the diversion agreement may restrict the defendant's
862 driving privileges, in addition to any suspension and restriction
863 required by K.S.A. 1988 Supp. 8-1014, to driving only under
864 the following circumstances: (1) In going to or returning from
865 the person's place of employment or schooling; (2) in the course
866 of the person's employment; (3) during a medical emergency;
867 (4) in going to and returning from probation or parole meetings;
868 drug or alcohol counseling or any place the person is required
869 to go to attend an alcohol and drug safety action program as
870 provided in K.S.A. 8-1008 and amendments thereto; (5) at such
871 times of the day as may be specified by the diversion agree-
872 ment; and (6) to such places as may be specified by the di-
873 version agreement.

874 In lieu of restricting the defendant's driving privileges as
875 provided above, or in lieu of suspending or revoking such
876 privileges, the diversion agreement may restrict the defendant's
877 driving privileges to driving only a motor vehicle equipped
878 with a functioning ignition interlock device, as defined by
879 K.S.A. 1988 Supp. 8-1013, which is approved by the division
880 of vehicles of the department of revenue and is obtained, in-
881 stalled and maintained at the defendant's expense. Any fine
882 required by this subsection[*] shall be reduced by the diversion
883 agreement in an amount equal to the expense incurred by the
884 defendant for obtaining, installing and maintaining such device.

885 Restrictions imposed pursuant to this subsection shall be for
886 a period of not less than 90 days nor more than one year, as
887 specified by the diversion agreement.

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888 Upon entering a diversion agreement restricting a person's
889 driving privileges under this subsection, the county or district
890 attorney shall require that the license be surrendered to the
891 county or district attorney. The county or district attorney shall
892 transmit the license to the division of vehicles of the depart-
893 ment of revenue, together with a copy of the diversion agree-
894 ment. Upon its receipt, the division of vehicles shall issue
895 without charge a driver's license which shall indicate on the
896 face of the license that restrictions have been imposed on the
897 person's driving privileges and that a certified copy of the
898 diversion agreement imposing the restrictions is required to be
899 carried by the person for whom the license was issued any
900 time the person is operating a motor vehicle on the highways
901 of this state. If the person entering into a diversion agreement is
902 a nonresident, the county or district attorney shall transmit a copy
903 of the diversion agreement to the division. The division shall forward
904 a copy of the diversion agreement to the motor vehicle administrator
905 of the person's state of residence. The county or district attorney
906 shall furnish to any person whose driving privileges have been
907 restricted under this subsection a copy of the diversion agree-
908 ment, which for a period of 30 days only shall be recognized
909 as a valid Kansas driver's license pending issuance of the re-
910 stricted license as provided in this subsection.

911 Upon expiration of the period of time for which restrictions
912 are imposed pursuant to this subsection, the licensee may apply
913 to the division for the return of the license previously surren-
914 dered by the licensee. If the license has expired, the person
915 may apply to the division for a new license, which shall be
916 issued by the division upon payment of the proper fee and
917 satisfaction of the other conditions established by law, unless
918 the person's privilege to operate a motor vehicle on the high-
919 ways of this state has been suspended or revoked prior to
920 expiration. Violation of restrictions imposed under this sub-
921 section is a misdemeanor subject to punishment and driver's
922 license suspension as provided by K.S.A. 1987 Supp. 8-201 and
923 amendments thereto.

924 (e) If a diversion agreement is entered into in lieu of further

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925 criminal proceedings on a complaint alleging an alcohol related
926 offense, the diversion agreement may suspend or revoke the
927 defendant's driving privileges. Suspension or revocation im-
928 posed pursuant to this subsection shall be for a period of not
929 less than 90 days nor more than one year, as specified by the
930 diversion agreement.

931 Upon entering a diversion agreement suspending or revoking
932 a defendant's driving privileges pursuant to this subsection, the
933 county or district attorney shall require that such license be
934 surrendered to the county or district attorney. The county or
935 district attorney shall transmit the license to the division to be
936 retained by the division.

937 Upon expiration of the period of time for which suspension
938 or revocation is imposed pursuant to this subsection, the li-
939 censee may apply to the division for the return of the license
940 previously surrendered by the licensee. If the license has ex-
941 pired, the person may apply to the division for a new license,
942 which shall be issued by the division upon payment of the
943 proper fee and satisfaction of the other conditions established
944 by law, unless the person's driving privileges have been oth-
945 erwise suspended or revoked prior to expiration.

946 (f) (e) If the county or district attorney elects to offer diversion
947 in lieu of further criminal proceedings on the complaint and the
948 defendant agrees to all of the terms of the proposed agreement, the
949 diversion agreement shall be filed with the district court and the
950 district court shall stay further proceedings on the complaint. If the
951 defendant declines to accept diversion, the district court shall resume
952 the criminal proceedings on the complaint.

953 (g) (f) Except diversion agreements reported under subsection
954 (h), the county or district attorney shall forward to the Kansas bureau
955 of investigation a copy of the diversion agreement at the time such
956 agreement is filed with the district court. The copy of the agreement
957 shall be made available upon request to any county, district or city
958 attorney or court.

959 (h) (g) At the time of filing the diversion agreement with the
960 district court, the county or district attorney shall forward to the
961 division of vehicles of the state department of revenue a copy of

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962 any diversion agreement entered into in lieu of further criminal
 963 proceedings on a complaint alleging a violation of K.S.A. 8-1567,
 964 and amendments thereto. The copy of the agreement shall be made
 965 available upon request to any county, district or city attorney or
 966 court.

INSERT

967 Sec. 46.⁴⁷ K.S.A. 8-235d and 22-2909 and K.S.A. 1988 Supp. 8-
 968 238, 8-243, 8-2106 and 12-4416 are hereby repealed.

969 Sec. 47.⁴⁸ On and after January 1, 1991, K.S.A. 8-234b, 8-237, 8-
 970 239, 8-241, 8-252 [and] 21-4619 and K.S.A. 1988 Supp. 8-235, 8-236,
 971 8-240, 8-254, 8-256, 8-259, 8-267, 8-294, 8-1002, 8-1014, 8-1015, 8-
 972 1018, 8-1566, 8-1567 and 12-4516 are hereby repealed.

[]

and 74-2012

973 Sec. 48.⁴⁹ This act shall take effect and be in force from and after
 974 its publication in the statute book.

INSERT

Sec. 46. On and after January 1, 1991, K.S.A. 74-2012 is hereby amended to read as follows: 74-2012. (a) All records of the division of vehicles relating to the physical or mental condition of any person or to expungement shall be confidential. Records of the division relating to diversion agreements for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908, and amendments thereto, shall be confidential and shall be disclosed by direct computer access only to: (1) A city, county or district attorney, for the purpose of determining a person's eligibility for diversion; (2) a municipal or district court, for the purpose of using the record in connection with any matter before the court; or (3) a law enforcement agency, for the purpose of supplying the record to a person authorized to obtain it under (1) or (2); or (4) an employer when a person is required to retain a commercial driver's license due to the nature of such person's employment.

All other records of the division of vehicles shall be subject to the provisions of the open records act except as otherwise provided by this section.

(b) Lists of persons' names and addresses contained in or derived from records of the division of vehicles shall not be sold, given or received for the purposes prohibited by K.S.A. 1984-Supp. 21-3914, and amendments thereto, except that:

(1) The director of vehicles may provide to a requesting

party, and a requesting party may receive, such a list and accompanying information from public records of the division upon written certification that the requesting party shall use the list solely for the purpose of: (A) Assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to: (i) Have safety-related defects, (ii) fail to comply with emission standards or (iii) have any defect to be remedied at the expense of the manufacturer; or (B) assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(2) Any law enforcement agency of this state which has access to public records of the division may furnish to a requesting party, and a requesting party may receive, such a list and accompanying information from such records upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(c) If a law enforcement agency of this state furnishes information to a requesting party pursuant to subsection (b)(2), the law enforcement agency shall charge the fee prescribed by the secretary of revenue and approved by the director of accounts and reports pursuant to subsection (c)(5) of K.S.A. 1984--Supp-

45-219, and amendments thereto, for any copies furnished and may charge an additional fee to be retained by the law enforcement agency to cover its cost of providing such copies. The fee prescribed pursuant to subsection (c)(5) of K.S.A. 1984--Supp. 45-219, and amendments thereto, shall be paid monthly to the secretary of revenue.

(d) The secretary of revenue, the secretary's agents or employees, the director of vehicles or the director's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission of a law enforcement agency in furnishing any information obtained from records of the division of vehicles.

(e) A fee in an amount fixed by the secretary of revenue and approved by the director of accounts and reports pursuant to subsection (c)(5) of K.S.A. 1984--Supp. 45-219, and amendments thereto, for each request for information in the public records of the division concerning any vehicle or licensed driver shall be charged by the division, except that the director may charge a lesser fee pursuant to a contract between the secretary of revenue and any person to whom the director is authorized to furnish information under subsection (b), and such fee shall not be less than the cost of production or reproduction of any information requested.

(f) The secretary of revenue may adopt such rules and regulations as are necessary to implement the provisions of this section.